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2526  
**No. 11902**

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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**FREEMAN STEAMSHIP COMPANY and  
FIREMAN'S FUND INSURANCE COM-  
PANY,**

**Appellants,**

**vs.**

**WARREN H. PILLSBURY, Deputy Commis-  
sioner, U. S. Employees' Compensation Com-  
mission,**

**Appellee.**

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**Apostles on Appeal**

---

**Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Southern Division**

**FILED**

**JUN 4 - 1948**

**PAUL P. O'BRIEN,**







No. 11902

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United States

Circuit Court of Appeals

For the Ninth Circuit.

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Upon Appeal from the District Court of the United States  
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Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADRESSES OF PROCTORS

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

## CITATION ON APPEAL

United States of America—ss.

To Warren H. Pillsbury, Deputy Commissioner,  
U. S. Employees' Compensation Commission,  
and James M. Carter, United States Attorney,  
and Clyde C. Downing, Assistant United States  
Attorney, Proctors, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 12th day of May, A. D. 1948, pursuant to an order allowing appeal filed on March 18, 1948, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 706, Southern Division, wherein Freeman Steamship Company and Fireman's Fund Insurance Company are appellants and you are appellee to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Paul J. McCormick  
United States District Judge for the Southern District of California, this 2nd day of April, A. D. 1948, and of the Independence of the United States, the one hundred and seventy-second.

/s/ PAUL J. McCORMICK,

U. S. District Judge for the  
Southern District of California.



Service of a copy of the foregoing Citation, Copy of Petition for Appeal, Order Allowing Appeal and Assignments of Error, are acknowledged this 2nd day of April, 1948.

/s/ JAMES M. CARTER,

United States Attorney.

By /s/ GERTRUDE M. JOHNSON,

Proctors for Appellee.

[Endorsed]: Filed April 5, 1948. [2]

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In the District Court of the United States Southern  
District of California, Southern Division

No. 706

FREEMAN STEAMSHIP COMPANY, a corpora-  
tion, and FIREMAN'S FUND INSURANCE  
COMPANY, a corporation,

Libellants.

vs.

WARREN H. PILLSBURY, Deputy Commis-  
sioner, 13th Compensation District,

Respondent.

LIBEL FOR INJUNCTION PURSUANT TO  
TITLE 33 USCA, SEC. 921

To the Honorable District Court of the United  
States, Southern District of California, South-  
ern Division:

The libellants Freeman Steamship Company, a  
corporation and Fireman's Fund Insurance Com-  
pany, a corporation, respectfully show:

## Article I.

Libellant Freeman Steamship Company, at all times herein mentioned has been and it now is a corporation. Libellant Fireman's Fund Insurance Company, at all times herein mentioned has been and it now is a corporation.

## Article II.

On the 6th day of November, 1944, one Walter Olcott was in the employ of the Freeman Steamship Company, a corporation, as a [3] longshoreman and on said date was working as such longshoreman aboard the steamer "Daisy Gray" on navigable waters of the United States, at San Diego, California.

## Article III.

On said date the said Walter Olcott suffered an injury upon the said navigable waters of the United States and the death of said Walter Olcott resulted therefrom.

## Article IV.

Within the time allowed a woman claiming to be the surviving wife of said Walter Olcott filed with the United States Employees' Compensation Commission, 13th Compensation District, a claim for a death benefit award. In said claim she alleged that she was married to said Walter Olcott on August 26, 1926.

## Article V.

Libellant Fireman's Fund Insurance Company, a corporation, at all times herein mentioned was the longshoremen's and harbor workers' compensation insurance carrier for said Freeman Steamship Company, a corporation.



Article VI.

On February 18th, 1946, the respondent made a Compensation Order awarding a death benefit to the said Cora E. Olcott and a copy of the said Compensation Order is as follows:

“United States Employees’ Compensation Commission, 13th Compensation District, Case No. 1017-42, Claim No. 2177. In the matter of the claim for compensation under the Longshoremen’s and Harbor Workers’ Compensation Act. Cora E. Olcott, Widow of Walter Olcott, deceased, Claimant; against Freeman Steamship Company, Benson Lumber Company, Employers. Fireman’s Fund Insurance Company, Pacific Employers Insurance Co., Insurance Carriers. [4]

“Compensation Order Award of Death Benefit

“Such investigation in respect to the above entitled claim having been made as is considered necessary and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

“Findings of Fact

“That on the 6th day of November, 1944, Walter Olcott, husband of the claimant herein, was in the employ of the employer, Freeman Steamship Company, above named, at San Diego Harbor, in the State of California, in the 13th Compensation District, established under the provisions of the Longshoremen’s and Harbor Workers’ Compensation Act, and that the liability of the employer for com-

pensation under said Act was insured by Fireman's Fund Insurance Company;

"That on the said day the said employee, while performing service for said employer, Freeman Steamship Company, sustained personal injury occurring in the course of and arising out of his employment and resulting in his death on November 12, 1944, as follows: While lifting heavy timbers on said November 6, 1944, he strained his abdomen, sustaining as a result thereof a small inguinal hernia which became strangulated and was followed by peritonitis and death;

"That defendant, Benson Lumber Company, was not the employer of said employee at the time of his injury and is entitled to be dismissed herefrom with its insurance carrier, Pacific Employers Insurance Company;

"That notice of injury was given within thirty days after the date of such injury, to the Deputy Commissioner and to the employer;

"That medical treatment was not furnished by defendants and that defendants are by stipulation liable for the reasonable cost of such medical, surgical and hospital treatment, the amount thereof to be fixed by further proceedings if the parties are unable to agree thereon; [5]

"That the death of the employee was not due to his unreasonable refusal to submit to medical or surgical treatment;

"That the average earnings of the employee herein at the time of his injury and death exceeded \$37.50 a week;

“That Cora E. Olcott, claimant herein, born February 27, 1879, is the widow of the deceased employee, Walter Olcott, was married to him on August 26, 1926, and was living with him as his wife and dependent upon him for support at the time of his injury. That she is entitled to a death benefit at the rate of \$13.13 a week beginning with November 12, 1944, payable in installments each two weeks or monthly at her election until the further order of the Deputy Commissioner, subject to the limits as to duration of payments, etc, contained in said Act;

“That the reasonable expense of burial of the employee was over \$200. and is owing to Benbough Funeral Parlor, San Diego, California;

“That claimant’s attorney, Ruell H. Liggett, has rendered legal service to claimant in the prosecution of her claim for which a fee is approved in the sum of \$100.00 and lien granted therefor upon compensation benefits herein awarded;

“Upon the foregoing facts, the Deputy Commissioner makes the following:

“Award.

“That the employer, Freeman Steamship Company, and the insurance carrier, Fireman’s Fund Insurance Company, shall pay to the claimant compensation benefits as follows:

“(1) To claimant the sum of \$200.00 on the burial expense, payable direct to said undertaking firm, Benbough Funeral Parlors, San Diego;



“(2) To claimant the sum of \$13.13 a week beginning with November 12, 1944, and payable in installments each two weeks or [6] monthly at her election thereafter until the further order of the Deputy Commissioner, subject however to the payment therefrom of the sum of \$100.00 to her attorney, Ruel H. Liggett, upon his lien for attorney’s fee.

“The claim is rejected as to defendants Benson Lumber Company and Pacific Employers Insurance Company, for the reason that said Benson Lumber Company was not the employer of the said employee at the time of his injury.

“Given under my hand at San Francisco, California, this 18th day of February, 1946.

WARREN H. PILLSBURY,  
Deputy Commissioner  
Compensation District.”

#### Article VII.

The only testimony relating to the question whether the said Cora E. Olcott is or is not the surviving wife of Walter Olcott is as follows:

Cora E. Olcott testified as follows:

“Q. You are Mrs. Cora E. Olcott?

“A. Yes, sir.

“Q. You live at 4501 71st Street, La Mesa, California?  
A. Yes, sir.

“Q. Were you married to Walter Olcott, as stated in your claim, on August 26, 1926, at Tijuana, Mexico?  
A. Yes, sir.

“Q. Were you continuing to live with him at the time of his last illness? A. Yes.

“Q. There has been no divorce or separation?

“A. No, sir.

“Q. And he was supporting you, was he? [7]

“A. Yes, sir.

“Q. Were there any children as a result of the marriage? A. No.

“Q. Was he helping to support any other person? A. No.

“Q. He supported nobody but you?

“A. That's right.

“Q. Do you have a marriage certificate or a certified copy of a marriage certificate?

“A. No, we don't have it.

“Q. Walter Olcott whom you married at Tijuana, Mexico, is the same Walter Olcott who died on November 12, 1944? A. Yes.

“Q. Whereabouts in Tijuana were you married?

“A. Well, I don't remember very much about it, it has been so long ago, and I never dreamed that I would ever have to keep anything in my mind in regard to it, but it was some place like they had in Yuma, some preacher, as I understand it. I had the papers, but I don't know what I did with them.

“Q. With reference to your marriage, you stated that you were married in Tijuana on August 26th, is that what you said, of 1926?

“A. Yes, that is the only time he was off from his work.

“Q. Can you tell me where in Tijuana you were married? A. I don't know.



“Q. Do you know whether it was an official government building, or was it a church?

“A. It was not in a church.

“Q. Not in a church?

“A. No. I don’t remember. It has been so long ago, and we never had thought of the thing before.

“Q. Do you know whether it was a minister or an official of the government that married him and you, or a priest?

“A. It was not a priest. He was something of a—Well, I don’t know what he was. He did that all himself, I didn’t have anything to do with it.

“Q. You were there?

“A. Yes, I was there when the ceremony was performed.

“Q. Who else was present?

“A. Some Spanish fellow and his wife.

“Q. Did you know this Spanish fellow?

“A. I don’t know them. They introduced me to them, but I did not know who they were.

“Q. You were introduced to them at the ceremony?      A. Yes, as a witness.

“Q. You had never seen them before?

“A. No.

“Q. Were they friends of Mr. Olcott?

“A. They were acquaintances. I did not ask them if they were his friends. He knew everyone there. I did not know anyone.

“Q. After you were married did you obtain some sort of a paper from the person performing the ceremony?

“A. Yes, got a paper, a certificate like my first marriage, as I understand it.

“Q. Was it in English or in Spanish?

“A. I think it was both, I think it was. Our names were written in English.

“Q. Did you have a marriage certificate?

“A. No, I misplaced it; I don't know where it is. I don't keep papers anywhere. I haven't kept any.

“Q. Have you endeavored to get a copy of it?

“A. Yes. We could not find it.

“Q. Have you gone to Tijuana or sent anyone to Tijuana to get a copy of the marriage certificate?

“A. Yes, I went down to Tijuana to see if I could locate the place, but I could not find it, because I haven't been there for eighteen years, you see.

“Q. When did you go?

“A. I don't remember. It has been a month; maybe two or three weeks.

“Q. Did you inquire at the government offices there?      A. Yes, that is where I went.

“Q. And they told you they had no record of it?

“A. They could not find it.

“Q. Did they tell you whether or not they had a record of it?

“A. They did not say whether they had ever had any or not, but they could not find that then.

“Q. They could not find a record of it?

“A. That's right.

“Q. Have you lived with Mr. Olcott continuously since August 26, 1926, as his wife?

“A. Every day, yes.

“Q. You lived publicly together as husband and wife?      A. Publicly and honorably.

“Q. During the whole time?      A. Yes.



“Q. (By Mr. Roberts): Mrs. Olcott, through your attorney you have filed a suit against the Fireman’s Fund Insurance Company?

“Mr. Pillsbury: You mean the present proceeding?

“Mr. Roberts: Yes. You will stipulate to that, will you not, Mr. Liggett?

“Mr. Liggett: Yes, I will stipulate to that.

“Mr. Pillsbury: Do you refer to the present proceeding, the case here before me?

“Mr. Liggett: I think counsel refers to a civil action in [10] the Superior Court for the purpose of establishing the fact of marriage.

“Q. (By Mr. Roberts): Do you remember, Mrs. Olcott, when Mr. Gallagher took your deposition on February 20th here?

“A. Yes. What do I have to remember?

“Q. Do you remember Mr. Gallagher asking you certain questions?      A. Yes.

“Q. In order to be definitely sure of the exact date that your marriage to Mr. Olcott took place, will you again tell me when it was?

“A. It was in August, ’26, or August, 1926.

“Mr. Pillsbury: Has there been any decree of the court to establish that?

“Mr. Liggett: No, there has never been any hearing in the matter.

“Q. (By Mr. Roberts): You and Mr. Olcott went to Tijuana by yourselves, did you not?

“A. Yes, sir.

“Q. And there were no friends or acquaintances that were with you?      A. None.

“Q. And did you personally file any application for a marriage certificate?

“A. Before I went, you mean?

“Q. At any time?

“A. No. We got the papers down there where we went to get married.

“Q. You did not sign any papers yourself?

“A. No. I guess I must have signed papers. They had papers. [11]

“Mr. Pillsbury: May I ask, Mrs. Olcott, did you find the marriage certificate that was referred to in the last hearing?

“The Witness: No, I haven’t found it.

“Mr. Pillsbury: Go ahead.

“Q. (By Mr. Roberts): What did you personally have to do in getting the papers?

“A. I didn’t do much of anything. We went there some place and was married, and he called in a couple that he knew, and that is all there was to it. He gave him some money and we went.

“Q. You mean he called in two witnesses?

“A. Yes, sir.

“Q. You did not know them yourself?

“A. No. They were friends of his; acquaintances down there. He was very well acquainted down there. I did not know anyone.

“Q. Do you know how long Mr. Olcott had known these witnesses?

“A. No, but he was well known in Tijuana for a long time.

“Q. You did not make the application yourself?

“A. No.



“Q. Were you with Mr. Olcott when he made the license or wrote out the application?

“Mr. Pillsbury: Just a moment. What is the purpose of this inquiry, Mr. Roberts?

“Mr. Roberts: I am laying a foundation for testimony by an expert witness.

“Mr. Pillsbury: Did you find any record at Tijuana?

“Mr. Roberts: No, sir.

“The Witness: Lots of people don’t find their records down there, either. [12]

“Q. Mrs. Olcott, have you made any effort to obtain a certificate of your marriage at Tijuana?

“A. Yes, I looked as far as I could go. I did not know where the place is where we was in. There was a number of places there to get married at that time.

“Q. When did you attempt to get a certificate?

“A. Oh, I don’t know. It has been a month ago, I guess.

“Q. Where did you go at that time?

“A. I don’t even know that, now. We went there some place. I guess the folks there know better than I do about that.

“Q. Was there someone here that went with you at that time?      A. Yes.

“Q. Were the witnesses who were present at the time the marriage ceremony was performed Americans?      A. No, they were Mexicans.

“Q. And you had never seen either one of them before?

“A. No. I might and I might not have. I did not pay any particular notice to them.

“Q. Do you know who performed the marriage ceremony?

“A. No, I don't. I supposed at the time it was the Judge. That is what I supposed.

“Q. Did he wear any kind of a uniform, such as a priest, or a preacher might wear?

“A. No; it was not a priest, because I did not have a priest.

“Q. You are sure it was not a priest?

“A. Yes.

“Cross-Examination

“By Mr. Liggett:

“Q. You stated in answer to a question asked you by counsel regarding papers that were signed there at that time, that you did [13] not know what you signed. Do you remember where it was that (you) signed any of the papers?

“A. No. In that little bureau of some kind that they get married in. There were others getting married there, so I guessed it was all right.

“Q. When counsel asked you the question if you made an application yourself, I believe your answer was in the negative. What did you mean when you referred to an application?

“A. That I went to look for it.

“Q. He asked you about at the time of your marriage if you made an application for a license. What did you mean when you said you did not make an application?

“A. I did not myself. He did. He got it himself.

“Q. (By Mr. Pillsbury): What do you understand by the word ‘application’?”

“A. I don’t know exactly what you mean by it, unless it was when you get your marriage.

“Q. (By Mr. Liggett): Were you with Mr. Olcott at all times? A. Yes.

“Q. You were with him, right with him?”

“A. Yes, I went right with him. But I was married before and I never seen no license.

“Q. Do you know what papers were produced for the signature of yourself and Mr. Olcott on that occasion?”

“A. As far as remembering what they looked like, I could not remember what they looked like.

“Q. Were there some papers?”

“A. Yes, I had the paper. He gave it to me to take care of, but I never took care of it.

“Q. Is it a fact, then, that you have no fair recollection as to what papers there were or how many there were or who signed [14] them?”

“A. No, I don’t.

“Q. After the marriage ceremony had been performed, did either you or Mr. Olcott get a paper of some kind that you were permitted to keep or bring home with you?”

“A. Yes, I had a paper.

“Q. How long did you have it?”

“A. I don’t know. It has been nineteen years, and it has been hard years; it has been nothing but work.

“Q. I understand that, but I want to know what you did with it. Did you bring it home?”

“A. Yes. I brought it home.



“Q. And you kept it for a time?

“A. Yes, sir.

“Q. But you don’t know what became of it?

“A. Yes, I remember of seeing my first one too, my first certificate, but I don’t know what I did with them. I can’t find them.”

John Roberts testified as follows:

“Q. What is your name?

“A. John Roberts.

“Q. What is your address?

“A. 3171 F Street, San Diego 2, California.

“Q. What is your occupation?

“A. I work in a laundry.

“Q. Do you know Mrs. Olcott here?

“A. I do.

“Q. How long have you known her?

“A. Oh, about nineteen or twenty years.

“Q. And did you know Mr. Olcott?

“A. Very well.

“Q. How long did you know him? [15]

“A. Since about nineteen or twenty years, along in there.

“Q. What information have you with reference to the marriage of Mr. and Mrs. Olcott?

“A. Well, we were intimate friends, very intimate. He came to me when he was going to lay off, and he said, ‘Jack, I am going to get married.’ And he said, ‘Don’t say anything, just keep it quiet.’ And he went away and got married, laid off a week, and he came by our house and was going to rent a house, and we lived on 36th Street at the time, in

the 4300 block, and he brought Mrs. Olcott—that was the first time I ever saw her—brought her and took her and my wife, and we went down to see the house he was going to rent on 47th Street, and that was in the 4200 block on 47th, and he told me he was married. We used to say almost anything to each other, because we were so intimate. I said, ‘What did you do? You went down there! Couldn’t you find a priest in San Diego?’

“He said, ‘I didn’t get married by a priest. We got married by a preacher.’

“He took the license out of his pocket, and I can’t tell you much about it. I saw it was a marriage license. That was eighteen years ago.

“Q. Did notice what language it was in?

“A. Yes; it was in Spanish.

“Q. (By Mr. Liggett): Where were you working at that time?

“A. I was working at the Benson.

“Q. Did you and Mr. Olcott both work at the Benson Lumber Company together?

“A. Yes, for years, many years. I worked for Benson Lumber Company in the nineties.

“Q. (By Mr. Grogan): Do you know if Mr. and Mrs. Olcott lived together as husband and wife from that time on? [16]

“A. I do. He introduced himself as her husband, and her as his wife.

“Q. Can you read Spanish?

“A. No, I can’t say I do. I know it when I see it. I can’t read it, but can tell you it is Spanish. I can’t talk it either.

“Q. (By Mr. Roberts): How do you know it was a marriage certificate?

“A. How do I know? How would you know?

“Mr. Pillsbury: Answer the question.

“A. I know by looking at it, of course.

“Q. How?

“A. Well, I don't know just how you want me to define that.

“Q. What did the paper look like to you?

“A. It looked like an official paper. It was a license. There was ‘Licencia’ there; I saw that. And of course, ‘Licencia,’ in Spanish, is ‘License,’ in English. It is pretty near the same as it is in English, very much the same.

“Q. How big was the paper?

“A. Oh, about perhaps the size of that, somewhere near that. A certificate form.

“Q. About half the size of a letterhead, or two-thirds letter size, perhaps?

“A. Something like that.

“Q. Did it have any seal on it?

“A. It did, but I never paid any attention to the seal. He just showed it to me. I wasn't interested in it, and I did not think I would have to say about it twenty years later.

“The Witness: He introduced her to my wife and I as, ‘My wife, Mrs. Olcott.’ ” [17]

Jesus Ruiz, testified as follows:

“Q. What is your name? A. Jesus Ruiz.

“Q. Where do you live, Mr. Ruiz?

“A. Tijuana.



“Q. What is your business or profession?

“A. I am a lawyer.

“Q. Are you admitted to practice in Mexico?

“A. Yes. I have a title which was given to me in May 1910.

“Q. Of what school are you a graduate?

“A. School of Law of the State of Chiapas, and also Free School of Law of Mexico City.

“Q. Have you held any official positions?

“A. Yes.

“Q. What?

“A. In my state after I was admitted to practice, I served as attorney general of justice of the state.

“Q. Of what state?           A. Chiapas.

“Q. What courts are you admitted to practice in?

“A. In all the courts of the Republic of Mexico.

“Q. Will you tell the Deputy Commissioner what laws were in effect governing the marriage ceremony in Mexico in 1926, and I refer particularly to those laws which governed marriages at Tijuana, Lower California?

“Mr. Pillsbury: I don't wish to try the question of the validity of the purported marriage. Any proceeding in the nature of annulment of a purported or voidable marriage should be brought in the proper court, and not before me. The question is open in this proceeding as to whether there was any marriage at all, but not the question of whether a purported marriage may or may not have [18] been valid and in compliance with all formalities.

“Mr. Roberts: The Defendant Fireman’s Fund Insurance Company and Freeman Steamship Company certainly want to put in the record with reference to whether or not the Mexican laws relating to marriage were complied with, because if those laws were not complied with, it is the contention of the defendant that this widow will not be entitled to compensation benefits.

“Mr. Pillsbury: If it is the contention that it is a voidable marriage, then that matter should go to some proper court for determination.

“Mr. Roberts: It may not only be voidable, but it may be void ab initio, and that is why I want to get this testimony in.

“Mr. Pillsbury: Will you tell a little more fully just what you propose to show by this witness?

“Mr. Roberts: I will try to prove by this witness that the laws in effect in August of 1926, as evidenced by the Civil Code, require that each party fill out and file an application, that they were required to give certain information about themselves, that they were required to be married by a Judge of the Civil Registrar, that it was necessary in order to perform a valid marriage in Tijuana at that time that both parties must have present a witness who had known them for a period of three years, and that at the time the application is made and at the time the marriage ceremony is performed the Judge of the Civil Registrar make a minute entry in the book for recording marriages at Tijuana, and that if those requirements were not complied with, the marriage never was performed.

“Mr. Liggett: I would object to that offer of proof because the main question in the case is as to whether those things did or did not happen, and this witness, as I see it, cannot offer us any testimony on that unless he has made a search of the records. If his testimony is to be theoretical as an expert, I don’t see how it can throw any light as to whether the many things which counsel [19] has enumerated here has or has not been done in Tijuana.

“Mr. Roberts: The woman’s testimony is very clear about what she did not do, especially with respect to the kind of witnesses.

“Mr. Pillsbury: If it is shown to be a fact that the claimant and Mr. Olcott did go to some Mexican office to a place wherein people were getting married and did go through some form of marriage and that she was given a certificate of marriage, then I would not assume jurisdiction here to determine whether those formalities sufficiently complied with Mexican law. That question is one which should come up, if at all, in proceedings to annul a marriage, and which is matter for the courts. In so far as there may be a contention, if there is one, that she did not go to Tijuana, did not go to any person, that there was no effort to have the marriage made, that question would be open and you could offer evidence on that.

“Q. (By Mr. Roberts): Mr. Ruiz, are there records kept in Tijuana of the marriages performed during the year 1926?           A. Yes.

“Q. Where are those records kept?



"A. In the office of the Judge of the Civil Registrar. There are two places where they are kept. One is in Tijuana, and the other is in Mexicali, in case one should be destroyed.

"Q. Have any of the records maintained in Tijuana ever been destroyed since 1925?

"A. No, I have been there all those years myself.

"Q. Did you at anybody's request make an examination of the books kept at the office of the Civil Registrar for the purpose of determining whether or not there was a record of the purported marriage between Walter Olcott, deceased, and Cora Olcott or Cora Hartshorn during the year 1926?

"A. I don't remember the names. On entering the court [20] here I saw this lady here and remembered her as one who had asked me to look up some records for her.

"Mr. Pillsbury: Mrs. Olcott, could you by any chance have used your maiden name at the time of the marriage?

"The Claimant: I took my maiden name.

"Mr. Pillsbury: What is your maiden name?

"The Claimant: Kinzer.

"Mr. Pillsbury: Did you use that name at Tijuana?

"The Claimant: Yes, I did use my own name. I did not use my former husband's name.

"Q. (By Mr. Roberts): Did Mrs. Olcott give you her name and the name of her husband, or what names did she give you?

“A. She gave me two names, but I don’t remember them because they are in English. I personally went to look for them, because I saw she was very much interested and I personally went through the books and I could not find the marriage record.

“Q. Over what period of time or during what years was the search made?

“A. All of the year of 1926, the whole year.

“Q. How did you make your search?

“A. Page by page, entry by entry.

“Q. (By Mr. Pillsbury): What names did you look up? What names did you search for?

“A. I don’t remember. It is impossible for me to remember it. The only thing I can remember is having seen the lady here in the room. I also made more of a search. As I could not find it, before I left I suggested to the clerk in the office that he assist her in every way that he could in looking through some of the other years.

“Mr. Roberts: May I be permitted to ask this witness who is [21] legally authorized to perform marriage ceremonies in Tijuana?

“Mr. Pillsbury: Yes, or was at that time.

“A. In that year, since 1917 up until 1932, the laws in effect were the laws of domestic relations, and in accordance with that law there was, as there is now, one official of the Civil Register. He is the Judge of the Civil Register, and that official is the one who performs all marriage ceremonies.

“Q. Mr. Ruiz, what were the requirements of Mexican law with reference to filing of an application for marriage in Tijuana at that time?

“A. May I get the Code?

“Mr. Pillsbury: Just state what it is.

“A. There must be filed a petition to the official of the Civil Registry, a written application, and that application must be signed by the man and by the woman who wish to marry. It must also be signed by the father and mother of both contracting parties in case they are alive, and by two witnesses for both parties, who have known them for three years before the marriage. In that condition it should be expressed the name of the bride and the groom. The names of the father and mother of each one of them should also be stated, where they lived, what was the occupation, their age, and the oath of their being no impediment to the marriage. The question of residence was taken very much into consideration, because only those could marry whose domicile was that of the official registrar. That is all.

“Q. (By Mr. Pillsbury): May I ask, was there only one person in Tijuana in 1926 who could solemnize a marriage?

“A. Yes. There is only one in each population in accordance with the law, and there was only one in Tijuana at that time.

“Q. Could a judge of the civil court perform a marriage ceremony? [22]

“A. No.

“Q. Or the mayor of the town or any other public officer?

“A. No; only in some towns where there is no judge of the civil register and where there is a mayor. In places where there is an official of the civil register, nobody else can perform the ceremony.



“Q. Cannot a priest or minister of the gospel perform a marriage, or could he at that time in Lower California?

“A. No, sir. Since 1884 up to date priests cannot marry any individuals unless they are married first by the civil registrar.

“Q. There was such a thing as a religious marriage, was there not?

“A. No, that is prohibited. It must first be a civil marriage, and priests cannot marry two persons unless they bring a certificate of marriage of the civil registry. If such minister or priest married a couple without such certificate, he would be violating the law.

“Q. There was a judge of the civil registry in Tijuana in 1926, August of 1926?

“A. I am sure there was.

“Q. Are there applications recorded?

“A. Yes, they are recorded, because the procedure is as follows: the petition is filed; the judge calls on each of the persons who have signed an application, one at a time, in order that they may say whether or not that which is written is true. When the applications are presented to the judge, he calls them all in to ratify it. Then after ratifying the application he fixes a time within eight days, and then when they are all present again he asks those who are to be married if they ratify their applications still, and if they still wish to be married, he then declares them to be married in the name of the law and in the name of society, and all that procedure is thereupon recorded in a book.

There is a record [23] made, written in a special book and in that book the married persons sign and the witnesses sign and all those who were present sign. The book is called the Book of Registry of Marriages, and that is kept in such manner.

“Q. When was Mrs. Olcott at the office of the Civil Registry?

“A. About three or four months ago, more or less, as I recollect. I don't remember exactly.

“Q. What conversation did Mrs. Olcott have with you at that time?

“A. She said it was very necessary that she prove she was married to a man who had suffered an accident; that she had lived with him during all of her life, and that it was necessary she have what she would be entitled to in order to live. For that reason I was interested, and I personally went through the books. I felt sorry for the lady, and I personally went to the office of the Civil Registry. After looking through the record there I was convinced that there was no record of her marriage.

“Q. (By Mr. Roberts): In your opinion, if the requirements of law were not complied with, as you have outlined them here, would there have been a legal marriage?

“Mr. Liggett: Objected to as calling for an opinion and conclusion of the witness, and also irrelevant, incompetent and immaterial.

“Mr. Pillsbury: Sustained. I will receive evidence as I said, but on the question of whether or not any attempted or purported marriage was in fact made, but not on the validity of any purported marriage.

“Mr. Roberts: I don’t follow your reasoning. May I have it a little more explicitly?”

“Mr. Pillsbury: You may offer any evidence you wish as to [24] whether Mr. and Mrs. Olcott did go to Tijuana or not, to officials there, for the purpose of getting married. And if it should appear that it is apparent that there was some marriage ceremony actually performed and a certificate given the parties, the question of whether that complies in all respects with the Mexican law, or its legal effect, is to be determined in the courts rather than by me. In other words, it would be in the nature of a suit to annul or set aside an invalid marriage, which is a judicial matter.

“Q. (By Mr. Roberts): Do you have any knowledge of your own as to the accuracy and the completeness of the records of marriages in Tijuana during 1926?”

“Mr. Liggett: I object to that as calling for an opinion and conclusion of the witness, and no proper foundation laid.

“Mr. Pillsbury: Objection overruled.

“A. The marriages legally held are properly registered or recorded, and in those records is shown the truth of what was done.

“Q. (By Mr. Pillsbury): Are there any other records of marriages there, not of legal marriages, that you had in mind?”

“A. No. But when I referred to marriages legally held, I meant that there are many ceremonies which are not legal and proper. But at that time, in 1926, there were not so many of those fake marriages.



“Q. Who are these people who have been performing marriages not legally right?

“A. I don't know exactly. I would like to know them. There are many offices which say, 'Law Office,' all along the whole street. That is where it is done.

“Q. Do they perform marriage ceremonies in those offices you have mentioned? [25]

“A. I know of one instance where I was working in the office of the Judge of First Instance that false marriage certificates and false divorce decrees were presented, some made in Ensenda and some in Tecate, and there wasn't any such marriage or such divorce.

“Q. Tell me, what were the written residence requirements for a valid marriage in Tijuana in 1926?

“A. They have always been, according to the Civil Code, six months of actual residence and doing business.

“Q. By both parties?           A. For both.

“Q. Then, an American cannot legally cross the border and be married in Mexico? Is that correct?

“A. No.

“Q. For an American couple to go across the border and get married and come back, that is not a legal marriage?

“A. They do not get married in Tijuana.

“Q. Did they in 1926?

“A. At that time the Governor of the State could waive that requirement of residence, but inasmuch as there had been many abuses of that privilege, since that time it has not been granted.

“Q. Isn't it a fact that many people from the United States have gone across the border and had some form of marriage ceremony performed and came back with a certificate?

“A. They went over there, and the man and woman executed a power of attorney for others to represent them and be married for them in the State of Chihuahua where there is a special law, the law of marriages by proxy.

“Q. How about people, men and women, going to Tijuana and going through some form of ceremony before some officer and being given a marriage certificate and told they are married and come back again, isn't that done to a considerable extent?

“A. What happens is this: I wish to admit the sin of my own town, and it is time that it was corrected. A couple does go to Tijuana to get married. They sign a power of attorney, and that power of attorney is sent to the State of Chihuahua so that they can be married by an attorney-in-fact over there. However, the man in Tijuana who does this work is not an employee of the government nor does he represent the law. I, personally, have not seen this actually done, but it is the common talk, and I have heard evidence to the effect that they go through a ceremony in Tijuana in much the same manner as a valid marriage, ‘Do you accept this woman as your husband?’ and that they declare them to be married. If they do not declare them married, the couple would not want to pay the \$25.00, or whatever the fee is. But there is no actual marriage performed. The marriage is not per-

formed until the power of attorney reaches the city of town in the State of Chihuahua, when the marriage is performed there by proxy, and the certificate of marriage returned from Chihuahua to the couple.

“Q. The certificate, then, is not given to the parties at the time of the ceremony in Tijuana?

“A. No, not at the time of the ceremony. Afterwards the certificate is sent by mail, and that is the certificate which is legal.

“Q. Has that been done occasionally in past years?

“A. They did not do it in 1926, because, as I stated before, there was no necessity for this, because Americans could come across the line and the Judge of the Civil Registry was permitted to marry them by a special dispensation of the Governor of the State.

“Q. Do all of those marriages necessarily appear in the registry of civil status?

“A. Yes. Which do you mean?

“Q. All of the cases of Americans going across the border in 1926 and becoming married?

“A. Yes, all of them. This is necessary, because in Mexico [27] you cannot prove the status of the persons without registration or a record.

“Q. In a case that I have had before me some years ago that Mr. Roberts is acquainted with, of Mrs. Cowie, the evidence showed that about nineteen hundred—I have forgotten the date—she and Mr. Cowie went across the border at Tijuana, went through some form of marriage that same day and



came back and she presented a paper purporting to be a marriage certificate in Spanish by some officer in Tijuana. I don't know whether that was verified by checking the files, but how would you account for that sort of a situation?

“Mr. Roberts: I would like to object to the question upon the grounds that it is incompetent, irrelevant, immaterial, and the answer would not tend to prove or disprove any issue in this case.

“Mr. Pillsbury: Objection overruled.

“A. The following might be done: Often people come to my office and say, ‘We are married, and here is our certificate.’ What they present is not a marriage certificate, but a sort of notice given by the official who performed the ceremony, in which it states, ‘Mr. So-and-so and Mrs. So-and-so were married on such-and-such a date, and the record of the marriage is in book so-and-so and on page so-and-so.’ That is the date which they have so that when they wish a copy of the certificate of marriage they can receive it by paying the cost of \$7.00. There are, however, some instances in which persons who are married in Tijuana are very much interested in getting a copy of the marriage certificate at once, and in that case they pay a special fee to the clerk, who will remain at his desk and not go out to eat and will stay there and make it up for him. That is all. If I had to take my daughter, for instance, to get married and I had urgent need for a copy of the decree of marriage now, I would pay \$25.00 or \$30.00 extra, and they would give me a copy the same day.

“Q. In the case you have just mentioned of the people [28] going to somebody, some official, and receiving such a paper, will there necessarily be a record of that in the register of civil status?

“A. You mean in the case of the man or wife coming in to me and handing me that notice?

“Q. Yes.

“A. The notice is always true, correct, and it serves the purpose of permitting the groom and bride to go to a church and be married religiously.

“Q. Will the registrar of the civil status you mentioned in that case have a record of that marriage?

“A. Yes, it is all there.

“Q. What I am trying to find out is, Is there some way of an American going across the line to Tijuana and going through what they believe to be a marriage ceremony and getting something which looks like a certificate and yet there not being a valid marriage recorded on the register of civil status?

“A. No, that was not the practice in 1926. At that time there were no proxy marriages; they were married legally; there was no necessity for them to commit that crime.

“Q. Is it a practice now?

“A. That is the general topic of conversation in the streets of Tijuana, but personally I have no knowledge of it. If I knew exactly who it was who was doing it, I would already have gotten him into jail.

“Q. If Americans go across the border into Tijuana now and go through a marriage ceremony and come back with a certificate and do not have three months residence in Mexico, or any residence in Mexico, how would you explain that situation?

“A. Possibly they obtained a dispensation of the Governor. It is covered by dispensation, much as when minors are married.

“Q. (By Mr. Liggett): Mr. Ruiz, did you ever search the records over in [29] Mexicali regarding this particular marriage between the Olcotts?

“A. No. I saw the originals, which are in Tijuana. The copies which are in Mexicali, I did not see.

“Q. When you speak of originals, they are both originals, are they not?

“A. Yes, they both are valid.

“Q. It is a fact, is it not, that all of these records are written in longhand and not in typewriting of any kind?

“A. There are some in print. When there are many applications in a day, the applications are filled in on a printed form, but the record is always written by hand. The applications are forms to be filled out, but the record is always in handwriting.

“Q. It is also true, is it not, that many of the marriage records at Tijuana have no index pertaining to them?

“A. Yes, they all have indices, almost all of them. There are some very old books which have no indices, but that is before 1919 when they began there.



“Q. Is it not also true that during the year 1926, or a part of the year 1926 and all of the years 1927 and 1928 that there are no indices at all?

“A. I think they exist. I have an idea that they do. I could not be sure that there were not.

“Q. Isn't it also true that many of the records are written in handwriting that is almost illegible, almost impossible to read?

“A. All are written by hand, but you can read them, well, by paying close attention. Some are indistinct and some are fair, but they can be read.

“Q. Is it also true that approximately seventy-five per cent, that is to say, three-quarters of all the marriages in the book for the year 1926 are between couples or people having American names rather than Mexican or Spanish names?

“A. Yes, there were lots of marriages at that time. [30]

“Q. And nearly all of those people were people who came over to Mexico from the United States?

“A. Yes.

“Q. And they came over there to be married and returned again to the United States immediately after the ceremony?

“A. I don't know whether they returned immediately, but I do know that many of them came over to be married.

“Q. And it is also true that at that time the matter of procuring both divorces and marriages by proxies through powers of attorney were also prevalent there, is it not?

“A. At that time there were no divorces or marriages by proxies. Now there are, yes, in Chihuahua.

“Q. There were then in Chihuahua, weren't there?       A. No.

“Q. When did the law in Chihuahua come in effect?       A. Which law?

“Q. The one with reference to marriages and divorces?

“A. Divorces about eight years ago, more or less, and marriages about a year and a half or two years ago.

“Q. It is also true, is it not, Mr. Ruiz, that certain marriage records are kept in Mexico City, referring to marriages performed in Lower California?

“A. No, and for this reason: all of the registrations are kept at the capitols of the states or territories. Up to the year 1919 the records for Tijuana were kept in Ensenada. From 1919 up to this date they have been registered in Tijuana and one copy sent to Mexicali. Never have copies been sent to Mexico City.

“Q. (By Mr. Pillsbury): Mexicali is the capitol of the state?

“A. Mexicali is the capitol of the Northern District of the Territory of Lower California, now.

“Q. Let me ask you again, Did you find the record for 1926 [31] well and carefully kept and comparatively complete, or incomplete?

“A. Yes, they are in order and well kept.

“Q. Is there any likelihood, in the case of Americans going across the border to be married in Tijuana in 1926 or later, that the ceremony would be performed and the papers would be filled out and that for any reason they would then not be recorded?

“A. That is, that the marriage was not performed?

“Q. No. The marriage was performed, but the papers not recorded, for any reason?

“A. No, because they have to sign the record. The record of the procedure is written in longhand in a bound book, the pages of which are numbered on both sides, and you cannot extract the leaves from the book, and at the conclusion of the ceremony the book must be signed at the foot of the written procedure.

“Q. Does it require a separate fee to have the papers recorded after the marriage is performed?

“A. They have to pay the fees to the court or to the judge, and a fee to the state.

“Q. And is there another fee for recording after that?

“A. There is no recording fee. It is right in the bound book. The marriage record is right in the book.

“Q. At the time of the solemnizing of the marriage?

“A. Yes. That is, the performing of the ceremony, the solemnizing of the marriage, is all entered in the book and the signing of the book. That is what we call the solemnizing of the marriage.



Without that record being signed there is no marriage.

“Q. I am not speaking of the validity of what they do. Here when the ceremony is performed the papers are signed by the person performing the ceremony and they are then sent over to the county clerk’s office to be recorded. Is there any practice like that in Tijuana for marriages?

“A. No. The judge who marries anyone in Tijuana has his [32] book and writes it in the book.

“Q. At the time?

“A. At the time of performing the marriage.

“Q. (By Mr. Grogan): Mr. Ruiz, at the time of Mrs. Olcott—the lady sitting here at the counsel table—at the time Mrs. Olcott came and met you at the marriage registry three or four months ago, as you have testified, did she tell you her name and the name of her deceased husband?

“A. She told me the name of the two for whom I searched the record. That is necessary, because in the margin of the record the names of the married parties appear.

“Q. (By Mr. Pillsbury): You don’t remember what names she gave you?

“A. No, I don’t. I just recognized the lady as I came in.

“Mr. Grogan: Let the record show that.

“Mr. Liggett: Mrs. Olcott, do you remember the conversation with Mr. Ruiz that he is mentioning?

“The Claimant: Yes, more than has been spoken of.

“Mr. Pillsbury: Anything else of Mr. Ruiz?

“Q. (By Mr. Liggett): When you looked up the index or the document for Mrs. Olcott, how did you have her name spelled in your mind? How did she tell you her name was spelled, and what letter did you look under?”

A. She wrote on a small piece of paper the name of the man and her name, and I took the paper. She said, ‘Here are the names.’ I then went away and looked for the record.

“Q. And were those the only names, the spellings of those names, that you looked under, that she gave you? A. Yes, no more than that.

“Q. She gave you the name of Olcott, didn’t she? [33]

“A. I don’t remember. It is impossible for me to remember.

“Q. Did you look under any other possible spellings of that name, such as Holcott, spelled with an ‘H,’ or Wolcott, spelled with a ‘W,’ or Alcott, spelled with an ‘A’?”

“Mr. Roberts: I object to the question. He just said he does not know. He took a piece of paper on which the names were written.

“Mr. Pillsbury: Objection overruled.

“A. Yes, I looked under similar names, as well as the names which she gave me, at the office of the civil registrar, and the clerk there joined with me and we looked together.

“Q. Did you look beyond the year 1926, either before or after?”

“A. Two years before, and the year 1926, and two years after, five years altogether we looked. I

also asked the lady if she remembered in what building she had been married, and if it was on the lower floor or upstairs. She could not explain to me how she got married.

“Q. Mr. Ruiz, was there any such thing as a common law marriage in Mexico in 1926?

“A. In 1926, no. That was the decision of 1917; prior to 1917 there was such a law. Eight years, it was.

“Mr. Liggett: The only evidence that I have to present at this time would be the testimony of one or two other people who have known the Olcotts for several years past and have known that they lived together and conducted and deported themselves and represented themselves to be husband and wife. If that can be stipulated, that such has been the case, I won't put them on, but if it cannot be stipulated, I will have to put on my witnesses.

“Mr. Pillsbury: Would it be stipulated that such witnesses, if called, would testify to that effect? [34]

“Mr. Roberts: Yes, I think we could stipulate to that.”

Cora E. Olcott, testified further as follows:

“Q. (By Mr. Pillsbury): Mrs. Olcott, I believe you indicated a moment ago you recall talking with this gentleman, Mr. Ruiz, who has just testified. A. Yes.

“Q. Did you give him the names to look up in the marriage book and records? A. Yes.

“Q. What names did you give him?



“A. I gave him my maiden name and Mr. Olcott’s.

“Q. Is there anything else you want to state about that conversation?

“A. He said he could not understand Mr. Liggett or the lawyers here. He said cases of that kind——

“Q. You are speaking of Mr. Ruiz now?

“A. Yes. Cases of that kind they had to prove that if they lived together for a number of years, that it was settled——

“Q. Anything else?

“A. That was all of importance, that they didn’t have to—that they were man and wife.”

#### Article VIII.

In addition to the oral evidence the respondent made investigation in respect to the question whether the said Cora E. Olcott is the surviving wife of Walter Olcott by writing to the Consulate of Mexico, San Francisco, California, on October 3, 1945 and a copy of said letter is as follows: [35]

“Official Correspondence Should Be Addressed to the Deputy United States Employees’ Compensation Commission, Longshoremen’s and Harbor Workers’ Compensation Act, Thirteenth Compensation District, 417 Market St., Room 318, San Francisco 5, Calif. In reply refer to File No. Walter Olcott, 1017-42.

“October 3, 1945.

“Consulate of Mexico

“San Francisco, California

“Attention: Senor Ballestero

“Dear Senor Ballestero:

“I am taking advantage of your offer to make some further inquiry for this office through Mexican government sources with reference to the contention of a valid Mexican marriage at Tijuana. You will recall discussing this matter with me in the presence of Mr. E. R. Kay one of the attorneys for the defendants, recently.

“The general problem is that the right of Mrs. Olcott to a death benefit for the fatal injury sustained by her husband at San Diego on November 6, 1944 depends upon the establishment of her claim that she was married to Mr. Olcott at Tijuana, Mexico, on August 26, 1926. She testified that they were married at a place where several couples were gathered for the purpose of being married and where marriage ceremonies were being preformed. At other times she states she was under the impression that her marriage was performed by a ‘preacher.’ She says a former marriage certificate, in Spanish, was given them, which has since been lost, and that there were two witnesses to the marriage, Mexican nationals, who were old friends or acquaintances of her husband. There being no evidence impugning her credibility, I am accepting her statement as true as far as it goes. She lived with Mr. Olcott continuously from the day of [36] the

asserted marriage until the date of his death on November 6, 1944, the parties holding themselves out to the community to be husband and wife.

“On the other hand a gentleman named Jesus Ruiz, a lawyer of Tijuana, testified that he has had a check made through the official records of marriage at Tijuana and no record appears of the marriage of these parties.

“Duplicates are kept at Nogales but apparently no search has been made there. If the marriages were validly performed, it would be shown on such records with one exception, that so-called proxy marriages under power of attorney are permitted by Mexican law in which the actual record would be at Chihuahua or in some other State of the Republic of Mexico. However, he testified that such proxy marriages were not being performed and were not valid in the year 1926 or before approximately two years ago.

“Several questions arise upon which I would appreciate any help that can be obtained from an impartial and authoritative source such as yourself or the Consulate to assist in determining as follows:

(1) Are the records of marriages at Tijuana for a period including the year 1926 carefully, completely and accurately kept.

(2) Upon the information stated above, is it possible or impossible that Mr. and Mrs. Olcott may have been validly married at Tijuana, notwithstanding the absence of an official record as testified to.



(3) If you should happen to be in Tijuana in the near future as you indicate, would you be able to look through the records for that year and see what you can discover.

(4) Is it possible, notwithstanding the absence of such [37] record that Mr. and Mrs. Olcott may have been colorably married at Tijuana, i.e., that they might have appeared before some person who might by argument be supposed to have some authority even though such authority does not now appear with complete validity.

(5) How can one reconcile the so relatively large number of Americans going across the Border to Mexican towns such as Tijuana and returning with purported marriage certificates and believing themselves to be married, on the one hand, with an indicated much smaller number of cases in which records of such marriage are found in the legal register of marriages.

“It seems to be a matter of common knowledge that more American couples go through some form of ceremony across the Border, are given some form of certificate and return in the belief that a marriage has been performed, than Mexican law as to residence requirements, etc. would permit to be married with entries in the register of marriages performed by proper authority.

“Thanking you for any help you can give me in determining the real facts and probabilities of the case, I remain

“Yours very truly,

“WARREN H. PILLSBURY,

“Deputy Commissioner

13th Compensation District.

“P. S. If a search should be made of the records, the information I have is that it was asserted to have been performed on August 26, 1926. Name of the husband was Walter Olcott. Mrs. Olcott states she was married under her maiden name of Cora Kinzer Hartshorn and search might be made under the name of Cora Hartshorn.

WHP.

WHP;s [38]

“CC to Mr. E. R. Kay, Attorney at Law, 233 Sansome Street, San Francisco, California; Mr. Murray H. Roberts, Attorney at Law, Citizens Bank Building, Wilmington, California; Mr. Ruel Liggett, Attorney at Law, 502 U. S. National Bank Building, San Diego 1, California.”

Said letter immediately hereinabove set forth was answered by Mario Ballesteros and a copy of said answer is as follows:

“Mario Ballesteros, ‘Edificio Lelevier,’ Ensenada, Baya California, Mexico.

“November 9, 1945.

“United States Employees’ Compensation Commission, Thirteenth Compensation District, 417 Market Street, Room 318, San Francisco, Cali-

fornia. Attention: Mr. Warren H. Pillsbury, Deputy Commissioner. File: Walter Olcott, 1017-42.

“Gentlemen:

“1. I have thoroughly checked the records of marriages at the Civil Register Office at Tijuana, Lower California, Mexico, and I have found that said marriages for a period of 31 years, including the year 1926, are carefully, completely, and accurately kept, as well as legally maintained.

“2. and 3. When I examined said records as stated above, I found that there was no records of marriage of Mr. and Mrs. Walter Olcott on August 26, 1926, or for any time during the year of 1926.

“3. According to article 46 of the Civil Code then in effect, which is worded as follows: ‘The civil status of persons [39] can only be proved by the respective entries in the register. No other document nor method of proof is admissible to prove the civil status, except in the cases provided for by articles 45 and 358.’ (Art. 45: ‘When no registers have existed, or they have been lost or destroyed, or effaced, or some of the leaves are missing on which it might be supposed (sic) the records was made, proof of the fact or act by means of instruments or witnesses may be received, but if one of the registers has been rendered useless and the duplicate exists, the proof shall be taken from the latter, without admitting any other class of proof (sic).’ And art. 358: ‘In the cases of abduction or



violation, when the time of the offense coincides with the conception, the tribunals may, at the instance of the interested parties, declare the paternity.); from the information stated above, it is impossible that Mr. and Mrs. Olcott were validly married at Tijuana. The Civil Register Offices have been in existence in Tijuana and instituted since 1914, and in this particular case, the records having not destroyed or effaced, and since none of the leaves are missing on which it might be supposed the record was made, and since therefore, no proof of the fact or act by means of instruments or witnesses may be received; and there being a duplicate book of the register which does not contain any record of such marriage, it is impossible that Mr. and Mrs. Olcott could have been legally or colorably married in Tijuana. They might have appeared before some person, but without any authority to perform marriages.

“5. The number of purported marriages by American citizens in Tijuana is not as large as commonly believed. The purported marriages which are supposed to have been performed in Tijuana, of which records no exists, are, without doubt, done by the parties for their own convenience or for other illegal purposes.

“Also, when I examined said records as stated above, I [40] found that there was no records of marriage under Mrs. Olcott’s maiden name of Cora Kinzer Hartshorn on August 26, 1926, or for any time during the year of 1926.

“Wishing that this information will be complete as requested, I remain

“Yours very truly,

“MARIO BALLESTEROS.”

#### Article IX.

There is no other evidence in the record of the proceedings before the respondent with reference to whether or not Cora E. Olcott is the surviving wife of Walter Olcott than as hereinabove set forth.

#### Article X.

One of the issues submitted to the respondent in his capacity as deputy commissioner was whether or not Cora E. Olcott is the surviving wife of Walter Olcott.

#### Article XI.

The award is not in accordance with law in that there is no evidence sufficient to support or sustain the findings that Walter Olcott was the husband of Cora E. Olcott or that Cora E. Olcott was married to Walter Olcott on August 26, 1926, or that the said Cora E. Olcott is entitled to a death benefit or that Ruel H. Liggett is entitled to a fee in the sum of One Hundred Dollars or to a lien therefor.

Wherefore libellants pray that the said compensation order be set aside and that enforcement thereof be enjoined.

/s/ LASHER B. GALLAGHER,

Proctor for Libellants. [41]

State of California,  
County of Los Angeles—ss.

Lasher B. Gallagher, being first duly sworn, deposes and says: That he is proctor for the libellants Freeman Steamship Company, a corporation, and Fireman's Fund Insurance Company, a corporation herein, and makes this verification on behalf of said libellants for the reason that he is more familiar with the matters set forth in the foregoing Libel for Injunction than the libellants, and for the reason that there are no officers of said corporations residing or now present in the County of Los Angeles where deponent has his office; that the source of deponent's knowledge is review of the typewritten record of proceedings before the deputy commissioner, exhibits admitted in evidence before the deputy commissioner and correspondence; that deponent has read the foregoing Libel for Injunction and knows the contents thereof, and the same is true to the best of deponent's knowledge, information and belief.

/s/ LASHER B. GALLAGHER,

Subscribed and sworn to before me this 4th day of March, 1946.

[Seal] /s/ ENES SARVELLO,  
Notary Public in and for said County and State.

[Endorsed]: Filed March 5, 1946. [42]



In the District Court of the United States in and for the Southern District of California, Southern Division.

In Admiralty No. 706

FREEMAN STEAMSHIP COMPANY and et al.,  
Libelants,

vs.

WARREN H. PILLSBURY, etc.,  
Respondent.

ANSWER OF RESPONDENT DEPUTY COMMISSIONER WARREN H. PILLSBURY

Now comes the respondent, Warren H. Pillsbury, deputy commissioner for the 13th compensation district, United States Employees' Compensation Commission, by his attorney, and for his answer to the libel herein:

- (1) Admits the allegations in Articles I, II, III, IV, V and VI.
- (2) In answer to Article VII of the libel, respondent denies that the only testimony relating to the question whether the said Cora E. Olcott is or is not the surviving wife of Walter Olcott is as stated in said Article VII and respondent refers to the transcripts of [43] testimony taken

at the hearings before him on March 7, 1945 and May 23, 1945, as to the nature and extent of the testimony adduced before him and makes said transcripts a part of this answer, together with copy of the compensation order complained of in the libel.

- (3) Admits the allegations in Article VIII of the libel.
- (4) Denies the allegations in Article IX of the libel, and in this respect respondent avers that on March 18, 1946, pursuant to the regulations duly adopted for the administration of the Longshoremen's Act, he certified the record of the proceedings before him for use by the Court in this proceeding for judicial review and respondent refers to said certificate and the evidence therein described as the complete record in the case, relating to the issue whether Cora E. Olcott was the wife of the deceased employee.
- (5) Admits the allegations in Article X of the libel.
- (6) Denies the allegations in Article XI of the libel.

Further answer the libel, the respondent deputy commissioner avers:

- (a) That as shown by the transcripts of testimony taken before the deputy commissioner and the certified record, made part of this answer, the findings of fact in the compensation order complained of, are supported by evidence and under the law said findings are final and conclusive and not subject to judicial review;

(b) That the compensation order is in all respects in accordance with law.

Wherefore this respondent prays that the libel be dismissed.

CHARLES H. CARR,  
United States Attorney.

RONALD WALKER,  
Assistant United States Attorney, Chief of Civil  
Division.

/s/ CLYDE C. DOWNING,  
Assistant United States  
Attorney.

Attorneys for Respondent Warren H. Pillsbury,  
Deputy Commissioner.

[Affidavit of service by mail attached.]

[Endorsed]: Filed May 7, 1946. [44]



United States Employees' Compensation Commission,  
13th Compensation District.

Case No. 1017-42, Claim No. 2177  
No. 706 S.D.

In the matter of the claim for compensation under  
the Longshoremen's and Harbor Workers'  
Compensation Act.

CORA E. OLCOTT, Widow of Walter Olcott,  
Deceased,

Claimant,

against

FREEMAN STEAMSHIP COMPANY, BEN-  
SON LUMBER COMPANY,  
Employers.

FIREMAN'S FUND INSURANCE COMPANY,  
PACIFIC EMPLOYERS INSURANCE CO.,  
Insurance Carriers.

### CERTIFICATION

This is to certify that I am the duly appointed,  
qualified and acting Deputy Commissioner of the  
United States Employees' Compensation Commis-  
sion, for the Thirteenth Compensation District, com-  
prising the State of California and other portions  
of the United States;

That there has recently been pending before me  
as said Deputy Commissioner, a claim for compen-

sation under said Act of Cora E. Olcott, widow against Freeman Steamship Company and Benson Lumber Company, employers, and Fireman's Fund Insurance Company and Pacific Employers Insurance Company, insurance carriers, my file No. 1017-42.

That the attached are true and correct copies of pleadings, transcripts of testimony, exhibits, and decision in said file, as listed below, being a copy of the entire claim file therein as far as relevant to a review of the above proceeding:

1. US-203, Employee's Claim for Compensation (copy)

2. Supplement to Employee's Claim for Compensation (copy)

3. US-262, Claim for Compensation in Death Case by Widow (Copy) [46]

4. US-215, Answer of Employer, SS Freeman and Co., and Insurance Carrier, Firemen's Fund Insurance Company.

5. Transcript of Testimony of March 7, 1945, with Exhibits

Exhibit A—Letter from Waterfront Employers Association of California, Long Beach, dated December 16, 1944.

Exhibit B—Statement of Earnings.

Exhibit C—Statement of Employee's Earnings on printed form of Waterfront Employers Association of California.

Exhibit D—Report of November 15, 1944 from R. O. Peck, MD.

6. Transcript of Testimony of May 23, 1945.
7. Letter of Warren H. Pillsbury, Deputy Commissioner of October 3, 1945, to Consulate of Mexico. (copy)
8. Reply of Mario Ballesteros of November 9, 1945.
9. Letter of Deputy Commissioner transmitting copies of Mario Ballesteros' letter of November 9, 1945. (copy)
10. Letter of Deputy Commissioner to Mario Ballesteros of December 5, 1945 (copy)
11. Letter of Deputy Commissioner to United States Embassy of December 14, 1945 (copy)
12. Letter of Edmundo Gonzalez, Consul of Mexico of December 10, 1945.
13. Letter from United States Embassy of January 17, 1946.
14. Letter from Mario Ballesteros of January 31, 1946.
15. Compensation Order—Award of Death Benefit dated February 18, 1946. (copy)

Given under my hand at San Francisco, California, this 18th day of March, 1946.

/s/ WARREN H. PILLSBURY,  
Deputy Commissioner,  
13th Compensation District.





## UNITED STATES EMPLOYEES' COMPENSATION COMMISSION

Office of Deputy Commissioner

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CASE No. \_\_\_\_\_

INSURANCE  
CARRIER'S No. \_\_\_\_\_

Administering Longshoremen's and Harbor Workers' Compensation Act

## EMPLOYEE'S CLAIM FOR COMPENSATION

(To be filed with the Deputy Commissioner in accordance with sections 13 and 19 of the law)

1. Name of employee Walter Olcott Employee's check No. 697331  
 2. Address: Street and No. 4501 71st St. City or town La Mesa, Calif.  
 3. Sex Male Age 59 Married, single, widowed Married  
 4. Do you speak English? yes Nationality American  
 5. State regular occupation Millman  
 6. What were you doing when injured? unloading the boat "Daisy Gray".  
 7. (a) Wages or average earnings per day, \$ 8.00 (Include overtime, board, rent, and other allowances.) (b) Per week, \$ \_\_\_\_\_ (c) Were you employed elsewhere during week in which you were injured? \_\_\_\_\_ (d) If so, state where and when \_\_\_\_\_  
 8. Were you paid full wages for day of accident? Yes.

INJURED  
PERSON

EMPLOYER

9. Employer Benson Lumber Co. and Waterfront Employers Assn.  
 10. Office address: Street and No. 1895 Main St. City or town San Diego, Calif.  
 11. Nature of business lumber

THE  
INJURY

12. Place where injury occurred On boat or pier, at Benson Lumber Co.'s Wharf  
 (Give place and name of vessel)  
 13. Name of foreman Ransom Harvey  
 14. Date of accident or first illness, the 6th day of November, 1944, at 2:00 o'clock P. M.  
 15. How did accident happen or how was occupational disease caused? Employee, Olcott, was unloading lumber from the boat "Daisy Gray" at the request of his employer, Benson Lumber Co. He picked up on end of a heavy plank and ruptured himself in the intestines.  
 16. State fully nature of injury or occupational disease: Ruptured intestines or burst bowel.

NATURE  
AND  
EXTENT OF  
INJURY

17. On what date did you stop work because of injury? November 6, 1944, 1944  
 18. Have you returned to work? (Yes or No) No If "yes," on what date? \_\_\_\_\_, 1944  
 19. Does injury keep you from work? (Yes or No) Yes, employee now deceased  
 20. Have you done any work in period of disability? no  
 21. Have you received any wages since injury? yes If so, from and to what date? \_\_\_\_\_  
For portion of day of injury, amounting to \$5.83  
 22. Has injury resulted in amputation? no If so, describe same Resulted in death  
 23. Did you request your employer to provide medical attendance? yes Has he done so? yes  
 24. Attending physician: Name Dr. Richard O. Peck Address Medico-mental bldg.  
 25. Hospital: Name Mercy Hospital Address San Diego, Calif.  
 26. Have you given your employer notice of injury? (Yes or No) Yes When? Nov. 6, 1944, 1944  
 27. If such notice was given, to whom? Foreman  
 28. Was it given orally or in writing? Oral.

NOTICE

I hereby present my claim to the Deputy Commissioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

Signed by CORA OLCOTT

Claimant

Dated January 13, 1944  
Filed Jan. 13, 1945 P.R.Mail address 4501 71st St., La Mesa, California





SUPPLEMENT TO EMPLOYEE'S CLAIM FOR COMPENSATION

The employee, Walter Olcott, was a regular employee of Benson Lumber Company. His foreman at Benson Lumber Company was Ransome Harvey. However, on the day of his injury he was instructed by Benson Lumber Company to go to the Benson Wharf to unload lumber from the steamship "Daisy Gray" owned by the Freeman Steamship Company of San Francisco, Capt. Bachman, Skipper. Olcott went to the pier and started the unloading. The unloading was under the general supervision of Waterfront Employers Assn. The check which he received for the portion of a day's pay on the day that he was hurt, in the sum of \$5.83, was signed by the Waterfront Employers Assn.

From the foregoing facts it will be seen that it is a little difficult for claimant to state definitely by whom he was employed at the exact moment of injury, although his regular employment then was and for many years last past has been with the Benson Lumber Company, and the aforesaid unloading of lumber operations were being performed on behalf of Benson Lumber Company. It is not known to the employee (nor to his undersigned widow) just what reciprocal or mutual arrangement there was, at the time of this injury, between Benson Lumber Company, the Steamship Company and the Waterfront Employers Association.



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## UNITED STATES EMPLOYEES' COMPENSATION COMMISSION

Office of Deputy Commissioner Warren H. Pillsbury, Dist. 13

Administering Longshoremen's and Harbor Workers' Compensation Act

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CASE No. 1017-42INSURANCE 82

CARRIER'S No. \_\_\_\_\_

## CLAIM FOR COMPENSATION IN DEATH CASE BY WIDOW AND/OR CHILDREN UNDER THE AGE OF EIGHTEEN

1 I hereby make claim for compensation arising out of the death of Walter Olcott  
 2 who died on November 12, 1944  
 3 at Mercy Hospital, San Diego, California, as a result of injury sustained on  
 4 November 6, 1944, at Benson Lumber Co.'s wharf, on Pier or  
Boat "Daisy Gray" (Place where injury happened, and name of vessel)  
 5 in the employ of Freeman Steamship Co., Steamer "Daisy Gray" & Owners (Name of employer)  
 6 whose address is 705 Fife Bldg., San Francisco (City or town) San Francisco (County)  
 7 Deceased left the following children who were under 18 years of age at the time of his death:

Name

Date of birth

none

These questions should be answered where the widow is claiming compensation

8 Widow was born on February 27, 1879 at Pike County, Ohio  
 9 (Date) (Place)  
 9 Widow was married to the deceased on Twenty-sixth day of Aug., 1926  
 10 at Tijuana, Mexico by a Judge of the First Instance.  
 (Place where married) (Name or title of person performing ceremony)  
 11 Last physician or hospital Mercy Hospital, San Diego, Calif. (Dr. Richard O. Peck, Medico-Dental Bldg., San Diego, Calif.)  
 12 Name of undertaker Benbough Funeral Parlor Address San Diego, Calif.  
 13 Amount of undertaker's bill, \$ 211.00 Amount paid, if any, \$ none  
 14 By whom paid — (Name) (Address)  
 Dated this 29th day of January, 19 45 Mrs. Cora E. Olcott (Signature of claimant)  
 Address 4501 71st St., La Mesa, Calif.

## AFFIDAVIT

STATE OF California, COUNTY OF San Diego, ss:

On this 29th day of January, A. D. 1945, personally appeared before me the above-named Mrs. Cora E. Olcott and made oath that the answers by claimant above named and subscribed are true.

Severly Anxier

Notary Public.

[SEAL]

Address 502 U.S. Nat'l Bk. Bldg.

Filed Feb. 15, 1945 P.M.

U. S. GOVERNMENT PRINTING OFFICE 16-20342-1

San Diego, Calif.

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UNITED STATES EMPLOYEES' COMPENSATION COMMISSION

Office of Deputy Commissioner WARREN H. PILLSBURY  
Administering Longshoremen's and Harbor Workers' Compensation Act

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CASE No. 1017-42

INSURANCE CARRIER'S No. \_\_\_\_\_

ANSWER OF EMPLOYER OR INSURANCE CARRIER TO EMPLOYEE'S CLAIM FOR COMPENSATION

Cora Olcott, Wife of , Claimant  
Walter Olcott, Deceased,  
  
SS. Freeman & Company , Employer  
Firemans Fund Ins. Co. , Insurance Carrier

The employer or insurance carrier above named for answer to the claim respectfully shows:

1. It is ~~admitted~~ <sup>denied</sup> that applicant sustained an injury on or about the date set forth in the application.
2. It is ~~admitted~~ <sup>denied</sup> that both the employer and employee were subject to the Longshoremen's and Harbor Workers' Compensation Act at the time of the alleged injury.
3. It is ~~admitted~~ <sup>denied</sup> that the relationship of employer and employee existed at the time of the injury.
4. It is ~~admitted~~ <sup>denied</sup> that at the time of the alleged injury the employee was performing service growing out of and incidental to his employment.
5. It is ~~admitted~~ <sup>denied</sup> that notice of injury was given employer as specified in application.
6. It is ~~admitted~~ <sup>denied</sup> that applicant was permanently disabled to the extent stated in application.
7. It is ~~admitted~~ <sup>denied</sup> that applicant was temporarily disabled for the period stated in application.
8. It is ~~admitted~~ <sup>denied</sup> that the rate of wages as set forth in application is correct.
9. \_\_\_\_\_

Signed MURRAY H. ROBERTS

Note.—The employer or insurance carrier should answer the claim within ten days from the date that a copy of it is served upon him. The original answer should be mailed to the deputy commissioner at the above address and a copy thereof served upon the claimant either personally or by mailing to the address in the claim.





United States Employees' Compensation Commission,  
before Hon. Warren H. Pillsbury, Deputy  
Commissioner, 13th Compensation District

Case No. 1017-42, Claim No. 2178

CORA E. OLCOTT, widow of Walter Olcott,  
Deceased,

Claimant,

against

FREEMAN STEAMSHIP CO., BENSON LUM-  
BER COMPANY,

Employer.

FIREMAN'S FUND INSURANCE COMPANY,  
PACIFIC EMPLOYERS INSURANCE CO.,

Carriers.

### REPORTER'S TRANSCRIPT

Proceedings at San Diego, California,  
March 7, 1945

Pursuant to Notice this matter was heard before Hon. Warren H. Pillsbury, Deputy Commissioner, United States Compensation Commission, in the Grand Jury Room, Court House of the County of San Diego, in San Diego, California, on Wednesday, March 7th, 1945, at 11:00 o'clock a.m.

Appearances were: Claimant in person and by her attorney, R. H. Liggett, Esq.; Murray H. Roberts, Esq., for defendant Freeman Steamship Company and Firemen's Fund Insurance Com-

pany; S. J. Grogan, Esq., for Pacific Employers Insurance Company and Benson Lumber Company; [53] J. G. Thomas, Esq., for Benson Lumber Company.

Mr. Pillsbury: Hearing on the claim for death benefit on account of the nature of the issues raised by the respondents, it is proven that hearing will be necessary. It is understood that the chief issue is whether the deceased employee Walter Olcott was in the employ of S. S. Freeman & Company, owners of the steamer "Daisy Gray" insured in the Firemen's Fund Insurance Company, or was in the employ of Benson Lumber Company, insured in Pacific Employers Insurance Company, at the time of the alleged injury.

Defendants Benson Lumber Company and Pacific Employers Insurance Company are represented by Mr. G. C. Thomas, attorney at law, appearing for Benson Lumber Company, and Mr. S. J. Grogan, attorney at law, appearing for Benson Lumber Company and Pacific Employers Insurance Company.

Defendants S. S. Freeman & Company, and Firemen's Fund Insurance Company not represented. An answer has been filed by them, constituting an appearance. I understood from their attorney, Mr. Murray H. Roberts, yesterday that he would be here, but assume that he has been delayed on the road. Because of shortage of time I am taking up the case after waiting fifteen minutes beyond the time set, [54] taking up matters first which presumably will not be involved in substantial controversy.

It is also possible that the situation known as general and special employer may also be an issue as to the identity of the employer.

Is there any question as to jurisdiction?

Mr. Grogan: No, we are not raising that issue; that is, the Benson Lumber Company or Pacific Employers.

Mr. Pillsbury: And you admit an injury in the course of the work that has caused the death?

Mr. Grogan: We have no definite information about that.

Mr. Pillsbury: You are placing that in issue, are you?

Mr. Grogan: No, we are not.

Mr. Pillsbury: You admit that it is——

Mr. Grogan: But it is our information that he did have an injury.

Mr. Pillsbury: Then you are willing to stipulate to it or that the burden will be on the plaintiff to establish it, if any?

Mr. Grogan: I think she should establish it.

Mr. Pillsbury: It will be in issue, then.

The following facts are agreed to between claimant and defendants Benson Lumber Company and Pacific Employers Insurance Company: [55]

First, that Walter Olcott, the deceased, was performing services of a maritime nature, to wit, stevedoring, on and about November 6, 1941, at San Diego, California, in connection with the steamship Daisy Gray, and at that time Benson Lumber Company was insured against liability under the Longshoremen's &



Harbor Workers' Compensation Act as extended by the United States in the defendant Pacific Employers Insurance Company.

Second, The claim is within the provisions of said Act and the jurisdiction of the Deputy Commissioner.

Third, No claim is made of intoxication or of wilfully self-inflicted injury.

Fourth, Notice of claim of injury within thirty days admitted.

Fifth, that the average earnings of the employe at said time were over the maximum prescribed by said Longshoremen's & Harbor Workers' Compensation Act.

Sixth, that no compensation has been paid.

Seventh, that temporary disability amounted to six days in all.

Eighth, that if award be made against these defendants it may include the reasonable medical, surgical, medicine and hospital expense incurred by and on behalf of claimant.

The issues as to these defendants are:

First: Whether Walter Olcott was in the employ of Benson Lumber Company at the time of the alleged injury; [56]

Second: Whether he was injured as claimed;

Third: Whether his injury occurred in the course of and arose out of the employment;

It is stipulated further that if said injury is established it may be taken to be the cause of the death.

Mr. Grogan: I wish to raise the issue of dependency.

Mr. Pillsbury: What is your contention there?

Mr. Grogan: I wish to put her on proof of the fact that she was dependent and also married to the deceased.

Mr. Pillsbury: At this point Mr. Murray H. Roberts, attorney for defendants Freeman Steamship Company and Firemen's Fund Insurance Company, enters the proceedings. Mr. Roberts, what issues are you raising on behalf of your clients?

Mr. Roberts: Employment, injury arising out of and in the course of the employment, dependency, unreasonable refusal to submit to the proper medical attention.

Mr. Pillsbury: Otherwise you are joining in the same stipulations?

Mr. Roberts: I wish to add another one, too: Average earnings.

Mr. Pillsbury: An Additional Issue will be noted as to the Benson Lumber Company as to the fact of relationship and dependency of the claimant.

With reference to defendants Freeman Steamship Company and Firemen's Fund Insurance Company, the following facts [57] are agreed to by the parties:

First, that Walter Olcott was engaged in maritime service, that is, stevedoring, on or about the steamship Daisy Gray on November 16, 1944, at San Diego, and at said time said Freeman Steamship Company was insured against liability under the Longshoremen's & Harbor Workers' Compensation Act by insurance in defendant Firemen's Fund Insurance Company.

Second, that the claim is within the provisions of said Act and the jurisdiction of this Commissioner.

Third, that no claim is made of intoxication or wilfully self-inflicted injury.

Fourth, if award be made in favor of claimant, it may include the reasonable medical, surgical and hospital expense.

Fifth, Notice of claim of injury within the proper time admitted.

Sixth, that no compensation has been paid.

Seventh, that temporary disability extended for six days only.

The issues raised by these defendants are:

First: Whether the said Walter Olcott was in the employ of defendant Freeman Steamship Company at the time of the alleged injury.

Second: Whether he was injured as claimed.

Third: Whether such injury occurred in the course of [58] and arose out of the employment.

It is stipulated that if said injury is established it may be taken as the cause of death.

Fourth: Average earnings of the deceased.

Fifth: Whether claim is barred by unreasonable refusal of the deceased to submit to medical attention.

Sixth: Relationship and dependency of claimant.

Any other issues, Mr. Roberts?

Mr. Roberts: No, sir.

Mr. Pillsbury: I will take Mrs. Olcott's testimony first.



MRS. CORA E. OLCOTT

having been first duly sworn by the Deputy Commissioner, testified as follows, to wit:

Direct Examination

By Mr. Pillsbury:

Q. You are Mrs. Cora E. Olcott?

A. Yes, sir.

Q. You live at 4501 71st Street, La Mesa, California? A. Yes, sir.

Q. Were you married to Walter Olcott, as stated in your claim, on August 26, 1926, at Tijuana, Mexico? A. Yes, sir.

Q. Were you continuing to live with him at the time of his last illness? [59] A. Yes.

Q. There has been no divorce or separation?

A. No, sir.

Q. And he was supporting you, was he?

A. Yes, sir.

Q. Were there any children as a result of the marriage? A. No.

Q. Was he helping to support any other person?

A. No.

Q. He supported nobody but you?

A. That's right.

Mr. Pillsbury: Mr. Liggett, any questions as to relationship and dependency?

Mr. Liggett: I believe not.

Mr. Pillsbury: Mr. Grogan, any questions?

(Testimony of Mrs. Cora E. Olcott.)

Cross-Examination

By Mr. Grogan:

Q. Do you have a marriage certificate or a certified copy of a marriage certificate?

A. No, we don't have it.

Q. May I ask your age, Mrs. Olcott?

A. 65.

Redirect Examination

By Mr. Pillsbury:

Q. Walter Olcott whom you married at Tijuana, Mexico, is the same Walter Olcott who died on November 12, 1944? [60] A. Yes.

Mr. Pillsbury: Mr. Roberts, any questions?

Cross-Examination

By Mr. Roberts:

Q. Were you ever married before, Mrs. Olcott?

A. Yes.

Q. To whom? A. Eugene Hartshorn.

Q. Where did you marry Mr. Hartshorn?

A. Hot Springs, South Dakota.

Q. How was that marriage dissolved?

A. Well, I got a divorce.

Q. Where did you get the divorce?

A. Oklahoma City.

Q. Do you have a copy of the decree of divorce?

A. No, I don't have any. I just can't keep papers. I lose everything.

Q. Did you have any other marriages, Mrs. Olcott? A. No.

(Testimony of Mrs. Cora E. Olcott.)

Redirect Examination

By Mr. Pillsbury:

Q. Were you divorced from this man before you married Mr. Olcott?

A. Oh, yes, thirteen years before. [61]

Recross-Examination

By Mr. Roberts:

Q. There wasn't any marriage in between Mr. Hartshorn's divorce and Mr. Olcott's marriage to you?      A. No, sir.

Q. Was Mr. Olcott, as far as you know, ever married before?

A. No, he was never married.

Q. Whereabouts in Tijuana were you married?

A. Well, I don't remember very much about it, it has been so long ago, and I never dreamed that I would ever have to keep anything in my mind in regard to it, but it was some place like they had in Yuma, some preacher, as I understand it. I had the papers, but I don't know what I did with them.

Mr. Pillsbury: If you are going to this at length we will postpone the further examination until we dispose of other witnesses. She can be recalled. We will dispense with the claimant's testimony for the moment and hear witnesses present on other issues. Mr. Liggett will lead off to establish the fact of injury, if you have witnesses present.



(Testimony of Mrs. Cora E. Olcott.)

Mr. Liggett: No. I subpoenaed Mr. Newman over here, and I presume he knows something about it.

Mr. Pillsbury: Meanwhile, expenses of burial, etc., have been over \$200.00 and has been unpaid. Will that be stipulated to? (Discussion.) It is stipulated that upon Mr. Liggett's statement as to the funeral expenses [62] were over \$200.00 and are unpaid, and that this is due to the Benbough Funeral Parlors, San Diego, California.

CARL O. NEWMAN

having been first duly sworn by the Deputy Commissioner, testified as follows, to wit:

Direct Examination

By Mr. Pillsbury:

Q. What is your name?

A. Carl O. Newman.

Q. How do you spell it?

A. (Spelling it out) N-e-w-m-a-n.

Q. Your address, Mr. Newman?

A. 2140 Granger Avenue, National City.

Q. What is your occupation?

A. At the present time I am working as a mechanic's helper.

Q. Did you know the late Walter Olcott?

A. Yes, I have known him from—by working there at Benson's for the last four years.

Q. Were you working with him or near him about November 6th of last year?

A. Yes, were discharging cargo off the Daisy Gray.

(Testimony of Carl O. Newman.)

Q. And that is the date asserted in the claim as the date of the supposed injury. Do you know anything [63] about his receiving any injury?

A. Walter and myself were working, building sling loads of lumber to be taken out of the hold to be discharged on the wharf.

Q. Were you on the ship at the time?

A. Yes. And the lumber was in pieces of 4x8's all the way from 14 to 32 feet long. It was wet and heavy. I handled one end of the stick and Walter handled the other, and that one particular piece—it was in the afternoon, and we had built several sling loads but I don't remember just how many, and we put a long stick about 32 feet long on the load to complete the work we were doing when he complained about severe pain in his stomach and put his hand over it and leaned against the load we were building and rested for a while. In fact, he sat down on the load.

Q. Did he say anything?

A. He just complained that he had a pain in his stomach.

Q. What did he say?

A. He said: "My stomach hurts," and put his arm over it, and he sat down, and I waited for him to get up, and by that time we had to place a short piece of the lumber about 14 or 16 feet long on the same sling load to finish it, and we lifted that up without any pryer, and we done the same thing, and that was all there was to it. He didn't lift up any more lumber after that, and I helped him out of the [64] hold on the ladder.

(Testimony of Carl O. Newman.)

Q. You didn't do any more work after he complained of a pain?

A. No, not on the ship, that I know of.

Q. What was he doing again just before he said that his stomach hurt him?

A. The first time or the second time when he said it?

Q. Were there two times?

A. He made the same remark on the long stick of lumber and again on the shorter stick.

Q. What was he doing with reference to the long stick of lumber just before or at the time when he said that his stomach hurt?

A. I looked at my head on the load and got it somewheres near the balance, and it wasn't up to him to lift up his end of the stick, but to help me slide it in place, and he had to twist to the left. He was standing right against the bulkhead of the ship, and in order to bring that stick over he had to twist to the left side. He had to place it in position.

Q. How heavy a lift would you say it was for each of you?

A. It is pretty hard to say where you get a balance on the stick, but I would say it would be around, perhaps, a hundred or two hundred pounds; something like that. [65]

Q. Was it about a normal lift or was it an unusually heavy lift?

A. I don't think two men could carry a stick like that.



(Testimony of Carl O. Newman.)

Q. Would you say whether it was heavier than ordinary work?

A. Yes, because the lumber was wet.

Q. How far had he gone on lifting his end when he complained?

A. It wasn't up to him to lift that end at all. It was his part to slide that stick end because I had the pressure on the other end over the balance on the sling load.

Q. Did he finish what he was doing with that piece?

A. Yes.

Q. How soon after that did he complain?

A. Right after the stick was in place.

Q. Was anyone helping him on his end?

A. No.

Q. What more do you know about his condition after that?

A. That is all I do know.

Q. Did he do anything on the short piece after that long piece?

A. Yes, he helped me lift that up and put it on the load.[66]

Q. And did he say anything then?

A. Yes, he made the same remark about the pain in his stomach, and put his hand over his stomach.

Q. Did you notice anything about his appearance at that time?

A. No, I could not tell anything about that.

Q. Did you see him again after that?

A. Yes, it was the next day when the mate on the ship wrote out a statement for him to go to the doctor. I had to sign that.

(Testimony of Carl O. Newman.)

Q. Did Olcott come down to the ship the next day?      A. No. He was on the pier.

Q. Did you see him on the pier?      A. Yes.

Q. What happened as far as you know?

A. I just asked Walter how he felt and said: "Not so good." He just made the remark that he was going to the doctor. I went back to work.

Q. Did you hear any conversation with the mate as to what he was doing?

A. No, the mate didn't say anything.

Q. How do you know there was anything said about a slip to be taken to the doctor?

A. The mate was writing a report out on the paper before I signed it.

Q. You signed the report, did you [67]

A. That was not as much a report as it was an order for Walter Olcott to go to a doctor.

Q. Did you sign your name on the slip to the doctor?

A. I signed it on that report that the mate made out, yes.

Q. Was that a slip to the doctor that you signed or a report of the injury?

A. I think it was both, a report plus an order to the doctor.

Q. Did you have any more conversation with Mr. Olcott at that time?      A. No.

Q. Did you see him again?      A. No.

Mr. Pillsbury: Mr. Liggett, any questions?

Mr. Liggett: I believe that covers it, sir.

(Testimony of Carl O. Newman.)

Cross-Examination

By Mr. Grogan:

Q. That slip you signed, did you read it before you signed it?

A. No, the mate explained to me that it was a report of the accident to the doctor for him to have medical treatment, and I signed it.

Q. Did he say anything to you about signing as a witness because you had witnessed the accident?

A. No, he said I was supposed to sign it as a witness [68] to the—that it had been an accident where it happened.

Q. That is, that you had witnessed the accident?

A. Yes.

Q. You weren't signing an order for the man to go to the doctor, as far as you know?

A. That I could not say, whether it was a direct order to go to the doctor or whether it was an order plus a statement of the accident.

Mr. Grogan: All right, I have no further questions.

Mr. Pillsbury: Mr. Roberts?

Cross-Examination

By Mr. Roberts:

Q. Mr. Newman, did Mr. Olcott vomit?

A. Not that I know of.

Q. Did he complain of being sick at his stomach?

A. He complained of severe pain in his stomach.

Mr. Roberts: That is all.

Mr. Pillsbury: That is all. You are excused.

Thank you. Next witness!



Mr. Liggett: I think I have nothing else. Of course, Mrs. Olcott can testify as to his actions around the house.

CORA E. OLCOTT

having been previously sworn, on being recalled to the witness stand, testified as follows, to wit:

Redirect Examination of Mrs. Olcott

By Mr. Pillsbury:

Q. Mrs. Olcott, did you have any conversation with your husband on November 6th about anything that might have happened to him?

A. Certainly. I helped him undress himself and put him to bed.

Q. What time was that?

A. It was in the middle of the afternoon some time. I didn't notice what time it was.

Q. Did you know how he came home?

A. Yes, he came home in the car.

Q. Did he drive the car himself?

A. Yes, he drove it himself.

Q. What did he say to you when he came in?

A. He said he lifted too hard and something snapped in his bowels.

Q. What more did he tell you at any time after that about the nature or origin of his condition?

A. He suffered very much and vomited all the time. He could not even keep water on his stomach.

Q. Did he tell you anything more about what had happened to him?

(Testimony of Mrs. Cora E. Olcott.)

A. No, only he lifted to heavy and that he should not have gone; he knew that he should not have gone there to work. [70]

Q. What doctor was there in attendance?

A. The company's doctor. It was Doctor Peck.

Q. Was he moved to a hospital?

A. No, Peck had him running up there every day practically, and they held him up there every day around the office, and he done nothing.

Q. How was he gotten into the Mercy Hospital?

A. Peck wouldn't come out there and he could not come up there any more. I wouldn't let him go up there any more because he was too sick afterwards, so Peck sent an ambulance after him Friday evening.

Mr. Pillsbury: According to my calendar November 6th was a Monday.

Witness: Yes.

Q. It was the following Friday, November 10th, that he was taken to the hospital?

A. Yes.

Q. And then he died on November 12th?

A. Yes.

Q. Were any other doctors in attendance, do you know?

A. No, not that I know of. There was a doctor that operated, Dr. Lawrence.

Mr. Pillsbury: Mr. Liggett, any questions?

Mr. Liggett: No. No questions.

Mr. Pillsbury: Mr. Grogan? [71]

Mr. Grogan: I have no questions.

Mr. Pillsbury: Mr. Roberts?

(Testimony of Mrs. Cora E. Olcott.)

Cross-Examination of Mrs. Cora E. Olcott

By Mr. Roberts:

Q. Mrs. Olcott, did you have an opportunity to observe Mr. Olcott's physical condition at the time you helped undress him?

A. What do you mean by "physical"?

Q. Did you see any marks or bruises or scars or anything like that?

A. Not on the outside, no.

Q. Was it a complaint of pain in the stomach, or anything more?

A. It was in the bowels right across the bowels, and then it all worked down to one side.

Q. And lodged in the groin, you mean?

A. Yes. I thought he had prostrate or appendicitis, because it was in that direction of the appendix, and the pain all worked down to that point.

Mr. Pillsbury: That will be all for the present. Have you any other evidence establishing the injury, Mr. Liggett?

Mr. Liggett: No.

Mr. Pillsbury: Then I will take the employment question next. Perhaps Mr. Newman has something on that. [72] He was working with him. Mr. Newman, will you take the stand again?



CARL O. NEWMAN

having been previously sworn, on being recalled to the stand, testified as follows, to wit:

Direct Examination

By Mr. Pillsbury:

Q. Mr. Newman, do you have any information as to who you were working for at the occasion on the steamship Daisy Gray on which Mr. Olcott complained of pain in the stomach?

A. Well, the only thing that I know about that is that we were not working for the Benson Lumber Company, and the money we drew was sent down from Santa Monica.

Q. Who asked you to go to work on the Daisy Gray?

A. Mr. West asked me if I would help out?

Q. Who? A. Mr. West.

Q. Who is he?

A. That is my foreman at Benson's.

Q. Did you have any conversation with anybody at the time you went to work as to who you were working for? A. No.

Q. All you know, then, is that your foreman sent you there? [73]

A. No, he didn't send me there. He asked me to help out on it; if I would help out on it.

Q. Where had you been working up to that time?

A. Out in the garage.

Q. You hadn't been working for the Benson Lumber Company? A. Yes.

(Testimony of Carl O. Newman.)

Q. What was your employment with the Benson Lumber Company?

A. I say I was—I am working in that garage, helping on truck repairs.

Q. Who was Mr. West employed by at that time?

A. Mr. West is superintendent for Benson Lumber Company.

Q. Have you any other information as to who hired the gang on which you were working, or of which you were a member in the work on this boat?

A. I don't know that part of it.

Mr. Pillsbury: Any questions, Mr. Liggett?

Q. (By Mr. Liggett): I would like to ask a question or two on that point. After you had received the suggestion, or direction, whichever it was, from Mr. West to report to the pier, did you find the boat Daisy Gray there when you arrived at [74] the pier?

A. Yes, sir.

Q. Whom did you report to when you got there?

A. To the mate.

Q. Do you know his name?

A. I don't know what his last name is, but we called him Charlie.

Q. Did he direct you where to go and what to do, this man Charlie?

A. Yes.

Q. How long had you worked there on or prior to the date of November 6th?

A. I think it was twice.

Q. You mean you worked there all day on the 6th?

A. Wait a minute. I didn't get that right. What was the question again?

(Testimony of Carl O. Newman.)

Q. You mean you worked there all day on the 6th?

A. I started to work when the Daisy Gray came in. I think it was the 3rd.

Q. Then is it true that you had worked there two or three or four days up to the date of this accident that you speak of where Mr. Olcott complained of injury?

A. Yes, sir.

Q. And during all of that time did you take your general directions, and so forth, from the man whom you called Charlie? [75]

A. Whenever necessary that we did have to have information about the cargo, or what to unload next, he was the man to give us the information.

Q. Did you report back each evening to the Benson Lumber Company when you finished work at the boat or at the pier?

A. No, that was not necessary.

Q. And did you report to the Benson Lumber Company each morning before you went to work on the boat or the pier?

A. No.

Q. You went direct from your home to the boat and back again?

A. That's right.

Mr. Liggett: I believe that is all.

#### Cross-Examination

By Mr. Grogan:

Q. Mr. Newman, while you were working on the Daisy Gray, did you receive any instructions or directions from the Benson Lumber Company?

A. No.



(Testimony of Carl O. Newman.)

Q. You took all of your orders and instructions and directions from this man, the mate of the ship?

A. That's right.

Q. And, I believe, you referred to him as "Charlie"? [76]

A. Yes, sir.

Q. (By Mr. Pillsbury): Did you receive any pay from the Benson Lumber Company for the time you worked on the Daisy Gray?

A. No.

Q. (By Mr. Grogan): Were you paid by the Waterfront Employers Association?

A. Yes.

Q. You said the check came from Santa Monica. Did you mean San Pedro, or do you know where it came from?

A. Well, it came from up north. I went over to the waterfront hiring hall and picked them up and then carried them over and handed them to Mr. West, and he gave them to the rest of the fellows that worked on the boat.

Q. At any rate, you did not get any check or money from the Benson Lumber Company for the time you worked on the Daisy Gray, is that right?

A. That's right.

Q. You started working there on the 3rd of November, on the Daisy Gray?

A. Yes.

Q. When did you finish?

A. After the boat was unloaded. It was about Tuesday or Wednesday.

Q. That would be the 7th or 8th of November?

A. That's right. [77]

(Testimony of Carl O. Newman.)

Q. You worked steadily, did you, the 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th of November?

A. Yes.

Q. You devoted your entire time to working on the ship?      A. That's right.

Q. Did you know that the ship was coming in on the 3rd of November?

A. No, I did not know it until I seen it come in, and then I was asked if I would help out to unload the cargo.

Q. Was your rate of pay the same while working for the Benson Lumber Company and while working or unloading the cargo on the ship?

A. No, the pay on the ship in my case was more.

Q. How much more?

A. Straight time for seven and one-half hours, and overtime after six hours was \$1.65.

Q. How much was straight time?

A. \$1.10 on the Daisy Gray.

Q. \$1.10 per hour?      A. Yes.

Mr. Pillsbury: Gentlemen, I am aware from other cases that \$1.10 and \$1.65 per hour are stevedoring boat rates. [78]

Q. (By Mr. Grogan): Mr. Newman, you were working as a stevedore, were you not?

A. Yes, sir.

Q. And Mr. Olcott was also working as a stevedore, was he not with you?      A. That's right.

Mr. Grogan: I believe that is all.

(Testimony of Carl O. Newman.)

Cross-Examination

By Mr. Roberts:

Q. Would this name sound familiar to you as being the man's name: Norman J. Huegenette?

A. I never heard the name before. I would not know.

Mr. Pillsbury: Do you have any other witnesses, Mr. Liggett?

Mr. Liggett: No, I haven't.

Mr. Pillsbury: Mr. Grogan or Mr. Roberts, do you desire to call a witness to this hearing?

Mr. Roberts: I have no witnesses.

Mr. Pillsbury: Mr. Grogan? Is Mr. West here?

Mr. Grogan: In the present state of the record, I don't believe there is any evidence against Benson Lumber Company, and I don't feel that there is any evidence for the defendant Benson Lumber Company to offer at this time.

Mr. Roberts: The only evidence before the Commission at this time [79] is that Mr. Newman was employed on the Daisy Gray.

Mr. Pillsbury: I will assume for the purpose of the evidence that Mr. Olcott was working on the same gang and under the same circumstances. Mr. Grogan, what further evidence have you to offer?

Mr. Grogan: Mr. West, take the stand, please.



CALVIN C. WEST

being first duly sworn, testified as follows:

Direct Examination

By Mr. Pillsbury:

Q. State your name. A. Calvin C. West.

Q. Your occupation?

A. Yard superintendent, Benson Lumber Company.

Q. Your address?

A. 3794 Pershing Avenue, San Diego, California.

Mr. Pillsbury: At this time Mr. Liggett offers a letter from the Waterfront Employers Association of California, Long Beach, dated December 16, 1944, making reference to an enclosed check——

Mr. Roberts: Is that to be offered in evidence?

Mr. Liggett: I will offer it in evidence.

Mr. Roberts: I object on the grounds that it is hearsay, and on the further grounds that it is incompetent, [80] irrelevant, immaterial, and does not tend to prove or disprove any issues in this case.

Mr. Pillsbury: Objection overruled. Received in evidence as Exhibit A. It will not be incorporated in the evidence, but will be accepted as an exhibit from Mr. Liggett.

Q. Were you familiar, Mr. West, with the arrangements or circumstances under which some lumber was being unloaded on the steamship Daisy Gray between about November 3rd and November 6th, or afterwards? A. I was.

(Testimony of Calvin C. West.)

Q. State what you know about those circumstances and what was the arrangement.

A. The customary arrangement had been, for the past three months previous to this date, on account of the man-power shortage and the boat being unable to obtain longshoremen, for the Benson employees to get permission from their business representative of the Lumbermen's Union to work aboard the boat to help discharge it.

Q. And this boat, the Daisy Gray—is my understanding correct—that that was unloading lumber for the Benson Lumber Company?

A. Consigned to the Benson Lumber Company, some of it, and some to other people in town.

Q. And there has been a Longshoremen's hiring hall in San Diego for many years? [81]

A. Yes, sir.

Q. Had any arrangements been made with them as to getting longshoremen to unload the Daisy Gray?

A. Yes, sir.

Q. What?

A. When the boat sails from the north it is customary for them to send us a wire about what time they leave. From that wire we can estimate just about what time it is due here. It has been customary for us to contact the longshoremen's hiring hall to find out the availability of manpower at the time the boat is due here. If they are unable to furnish us with a sufficient crew to unload the boat, it has been our practice to allow any of our employees that wanted to work aboard the boat to do so.

(Testimony of Calvin C. West.)

Q. In this case did you clear with the hiring hall first?      A. Yes, sir.

Q. What were you told at the hiring hall?

A. They told me that it was O. K. Mr. Taylor told me that it was O. K., that any of the boys that wanted to work, why——

Q. Then what did you do?

A. At the time I found out that the boat would be in approximately Friday, November 3rd. I believe, why, that news gets around through our employees, and some of them like to have that work, on account of it being more pay and [82] overtime. So I made up a list like I always do of the different boys that would want to work on that particular boat at that time and told them, the boys, the boys that I knew, that I was not sure how many men the Daisy Gray would require until it arrived and I was able to contact the captain and the first mate. My list consisted of eleven or twelve men that were willing to work on board the Daisy Gray. At the time the Daisy Gray arrived, approximately at twelve o'clock noon of the 3rd, I had previously between, that morning, contacted the longshoremen's hiring hall and they told us they would not be able to furnish only two men. I told that to the captain of the Daisy Gray, that two men was all that he would be able to get from the longshoremen's hiring hall. He and the mate conferred together and said they would need eleven men at one o'clock Friday, November 3rd, so during my lunch hour, that is, between twelve o'clock and one o'clock, you under-



(Testimony of Calvin C. West.)

stand, I contacted different parties I had on this list I had made up and asked them if they cared to go out there at one o'clock. In doing that I tried to not show preference between one department and the other. I am, you see, yard superintendent there and must pick them so as not to show preference.

Q. Did you have a conversation with Mr. Olcott?

A. Yes; previous to that Mr. Olcott asked me when this boat came in if he would have an opportunity to work on the Daisy Gray when she came in. I said to Walter, "Do [83] you want that kind of work?"

He said: "Yes, I would like to get some of it. I would like to get some extra money."

I said: "When the boat comes in I will see if they need men, and I will try to work you in."

Q. What did you say to him after that day?

A. I don't go particularly to date.

Q. Did you speak to him again after the boat arrived?

A. After the boat arrived I said: "The boat is in. There is an opening if you want to go to work."

"O.K.," he said, "I will be there at one o'clock."

Q. Do you know whether he or you contacted anyone else about going to work about getting the job? Let me put it this way: Do you know whether his name was placed on the payroll for that job?

A. Their names are never placed on the payroll until they go on board ship.

Q. Who handles the payroll?

A. The first mate on the ship.

(Testimony of Calvin C. West.)

Q. And do you know his name?

A. His name is Huegenette.

Q. Do you know whether Mr. Olcott's name was placed on the payroll when he went on the ship?

A. I do.

Q. Did you hear anything said about that at the time?

A. No, sir, I have nothing to do with that end of [84] it whatsoever. That is entirely up to the first mate.

Q. That is, you merely tell the man to go to the job?

A. To report to the ship, yes, sir.

Q. Did you take any list to the ship, or to the mate, of the men who would report?

A. Yes, sir, I do that.

Q. Did you give the mate Mr. Olcott's name?

A. I think I did, yes, as an accommodation to the mate, to just check the crew up.

Q. Did you see Mr. Olcott working there after you went on board?

A. Yes, sir.

Q. You know he was working on board?

A. Yes, sir.

Q. What is the payroll arrangement, if you know, as to what payroll these men are carried on?

A. The Waterfront Employers Association, the way I understand it, takes care of the entire payroll of outside help that they hire, and then re-bills the boat for that.

Q. Do you know whether Mr. Olcott's name was taken off the Benson Lumber Company payroll?

A. I know it was.

(Testimony of Calvin C. West.)

Q. How do you know it was?

A. His card was O.K.'d out at twelve o'clock that day by Mr. Olcott's foreman. [85]

Q. What do you mean by that?

A. They punch a time clock, or card, and as soon as they punch it out it is then O.K.'d out. The foremen O. K. it out.

Q. In other words, Mr. Olcott was taken off the Benson Lumber Company payroll at noon?

A. Twelve o'clock, yes.

Q. Do you know whether he was paid anything by the Benson Lumber Company for working on the Daisy Gray on this occasion?

A. I know he was not.

Q. Do you know anything about the arrangement between the Daisy Gray, or Freeman Steamship Company, and the Waterfront Employers Association?      A. Just hearsay only.

Mr. Pillsbury: Mr. Roberts, can you stipulate to the arrangement between the Steamship Daisy Gray and Freeman Steamship Company and the Waterfront Employers Association with reference to hiring the stevedores and those doing stevedoring work on vessels of the employer in Southern California?

Mr. Roberts: I would stipulate that that is the purpose of that office, but I cannot connect it up with the Freeman Steamship Company, because there is no bit of showing they are a part of the Waterfront Employers Association.



(Testimony of Calvin C. West.)

Mr. Pillsbury: Can you state who provided the money [86] which was used in paying the amount of \$5.83 referred to in Exhibit A, the check sent to Mrs. Olcott in lieu of the check made out to her deceased husband?

Mr. Roberts: No, sir, I cannot.

I will state this, that if I find out that it was paid by the Freeman Steamship Company, that I will stipulate that that was the fact.

Mr. Pillsbury: You can send in a letter giving the results of your information, if that is the case, but, however, the record will remain incomplete until the point is covered.

Mr. Grogan: I propose to prove by witnesses present that we did not pay the deceased, Mr. Olcott, any money after November 3rd.

Mr. Pillsbury: Will you have any witnesses to show who provided the money used to pay his wages on the Daisy Gray?

Mr. Grogan: I don't know whether Mr. West knows that or not. It is my understanding that Mr. West does not, I believe.

Mr. Pillsbury: Do you have any information, Mr. West, as to what or who provided the pay which was presumably given to the men working on the Daisy Gray for stevedoring at San Diego?

Mr. West: I distributed the checks to the different men, to those on the list, and the last check that he got [87] was for a few hours work on Monday, the 6th, I believe it is.

Mr. Pillsbury: Is that \$5.83?

(Testimony of Calvin C. West.)

Mr. West: Something like that, just for a few hours work. That was sent to Mrs. Olcott by Mr. Harvey. I had him take it out to her.

Q. (By Mr. Pillsbury): Whose check was that?

A. Waterfront Employers Association.

Q. Do you know how the Waterfront Employers Association got the money, or from whom?

A. Definitely, I do not.

Mr. Pillsbury: The point will remain open, then. Mr. Grogan, take the witness.

Q. (By Mr. Grogan): Mr. West, you are superintendent for Benson Lumber Company?

A. Yard superintendent, yes.

Q. During the time that Mr. Olcott worked on the Daisy Gray did you exercise any supervision or control over him? A. None whatsoever.

Q. Did you give him any instructions or directions as to the manner in which he was to perform his work? A. No, sir. [88]

Q. Prior to November 3rd had you had any conversation with Captain Dackman?

A. That's right.

Q. Who is Captain Dackman?

A. He is the captain of the Steamer Daisy Gray.

Q. Do you know by whom he is employed?

A. He is employed by the Freeman Steamship Company.

Mr. Pillsbury: Mr. Roberts, will you stipulate that the Steamship Daisy Gray was in the first week of November, 1944, either owned or contracted for and operated by the S. S. Freeman Steamship Company?

(Testimony of Calvin C. West.)

Mr. Roberts: Yes, I will so stipulate.

Mr. Pillsbury: All right, go ahead, Mr. Grogan.

Q. (By Mr. Grogan): Do you know Norman Hubenette?

A. Yes, sir, that is the first mate.

Q. Do you know a mate on the Daisy Gray who is called Charlie?

A. Yes; his name is really Carl Swenke.

Q. You heard Mr. Newman testify concerning the mate named Charlie?

A. They call him Charlie. His name is actually Carl; Carl Swenke.

Q. So Charlie Swenke and Carl Swenke is one and the same person. And was he on board the Daisy Gray on the 3rd of November? [89]

A. Yes, sir.

Q. You saw him there, did you?

A. Yes, sir, I did.

Q. Had Captain Dackman asked you to get men for him to assist in unloading the ship?

A. Yes, sir.

Q. When was that?

A. I could not definitely say as to date. Probably two or three months previous to that. He said if there was no arrangements made to get unloading, they may not be able to bring the boat in here any more.

Q. You received word from Captain Dackman before November 3rd that the boat would arrive on November 3rd?

A. They don't say as to what time they will arrive; they say what time they left up there. It takes about ninety-six hours thereafter.



(Testimony of Calvin C. West.)

Q. Had Captain Dackman requested you to line up a crew of longshoremen?

A. Not that particular trip.

Q. How did you happen to make the arrangement on this occasion?

A. He requested it at twelve o'clock on November 3rd, that I make arrangements for men. He and Huegenette both requested—that they needed eleven men.

Q. I believe you testified that on November 3rd Olcott was taken off the payroll of the Benson Lumber [90] Company?

A. Yes, sir.

Q. You know that of your own knowledge?

A. Yes.

Q. As superintendent, were you aware of who was on the payroll of the Benson Lumber Company on November 3rd?

A. Yes.

Q. As superintendent of the Benson Lumber Company did you have supervision and control of the payroll for the employees of the Benson Lumber Company?

A. Yes, I did.

Q. And do you know of your own knowledge whether or not Olcott received any pay from the Benson Lumber Company after November 3rd, 1944, at noon?

A. I know that he did not.

Q. After noon of November 3rd, of 1944, did you give any instructions or directions to Walter Olcott?

Mr. Roberts: Objected to as asked and answered several times.

Mr. Pillsbury: Objection sustained.

(Testimony of Calvin C. West.)

Q. (By Mr. Pillsbury): Do you know whether the Steamship Daisy Gray was being unloaded under contract with any contract of stevedoring on that occasion?

A. No, I know of no contract, no.

Q. You didn't hear of any contracting stevedores [91] unloading at that time for the ship?

A. No, sir.

Mr. Grogan: I believe that is all.

### Cross-Examination

By Mr. Roberts:

Q. Mr. West, was Walter Olcott at the time of his employment by Benson Lumber Company on the monthly payroll? A. Hourly pay.

Q. On the hourly payroll? A. Yes, sir.

Q. And it is your testimony that you keep the payroll record yourself?

A. I have access to it, yes. That is, I don't keep the actual payroll, no, but I have access. I see the cards and the pay checks.

Q. Did you see Mr. Olcott's check for the time he worked for the Benson Lumber Company prior to the time he started to work unloading this cargo?

A. Yes.

Q. How much was it?

A. I could not say.

Q. Did you personally check the payroll yourself for the time that he worked for Benson?

A. No, I did not check his pay card. Mr. Harvey checks that, but I see the card. [92]

(Testimony of Calvin C. West.)

Q. What I want to know is what you know of your own knowledge, Mr. West.

A. Well, I have access to his card.

Mr. Roberts: No, that is not what I want to know. Repeat the question, Mr. Reporter.

(Record read, as follows):

“Q. What I want to know is what you know of your own knowledge, Mr. West.”

Mr. Roberts: Read the question before that.

(Record read, as follows):

“Q. Did you personally check the payroll yourself for the time that he worked for Benson?”

“A. No, I did not check his pay card. Mr. Harvey checked that, but I see the card.

“Q. What I want to know is what you know of your own knowledge, Mr. West.”

A. I can answer yes to that.

Q. When?

A. On Thursday, and I checked it that same day, and also on Monday, the 6th, and also—I beg your pardon, I checked it on Friday, November 3rd, and also on Thursday, which would be November 9th.

Q. For what purpose?

A. To see if it agreed with the amount of time he actually worked for the Benson Lumber Company. [93]

Q. (By Mr. Pillsbury): Is this payroll made up in the department in which you have supervision? A. No.



(Testimony of Calvin C. West.)

Q. (By Mr. Roberts): As a matter of fact, the payroll records are kept and maintained in the office, aren't they, and they are not under your jurisdiction at all, they are in the office manager's jurisdiction?

A. That's right.

Q. A moment ago you testified that you had a conversation with the master of the Daisy Gray to the effect that unless there was sufficient manpower here, that they would not be able to come in any more. Is that right?

A. That's right.

Q. What effect, if any, would that have had on the Benson Lumber Company?

A. It would have shut off their source of supply.

Q. So that it was, therefore, to the Benson Lumber Company's advantage to have manpower available, is that right, to unload the ship?

A. I would say so, yes.

Q. So far as the part that was consigned to them is concerned?

A. That's right, only. [94]

Q. (By Mr. Pillsbury): In connection with this trip of this boat in the first week in November, do you know whether there was any lumber on the boat consigned to other parties at San Diego?

A. I do. There was.

Q. (By Mr. Grogan): And did this same crew of stevedores unload that part of the cargo?

A. They did.

Q. And did they do that on Sunday, November 5th?

(Testimony of Calvin C. West.)

A. Saturday and Sunday. But Walter Olcott was not on the job on Sunday, but the same crew did.

Q. And Walter Olcott was on the job on Saturday? A. That's right.

Q. And he aided in unloading that proportion of the cargo that you had nothing to do with?

A. That's right, that was consigned to somebody else.

Q. (By Mr. Liggett): Are you familiar with a sheet of paper which I will hand you, Mr. Grogan, which reads, "Walter Olcott, period ending November 8, 1944"? A. Yes, sir.

Q. What is it?

A. This is an employee's copy of the pay roll that he received for the period ending November 8th.

Q. (By Mr. Pillsbury): For what employer?

A. For the Benson Lumber Company.

Q. (By Mr. Liggett): That was attached to the pay check, was it not? A. Yes, sir.

Q. Are you able to look at it and tell for what period of time that check was paid for? That is, what period of work that covers?

A. Yes, sir; Thursday, eight hours, Thursday, November 2nd; four hours Friday, November 3rd.

Q. That is noted on the check, is it?

A. No, sir, noted on the time card.

Q. Where did you get those figures you have just given us?

A. Well, from his time card in the main office.

(Testimony of Calvin C. West.)

Q. (By Mr. Pillsbury): Do those figures appear on the slip you have in your hand?

A. No, the dates do not appear. It just shows so many hours.

Mr. Roberts: I move to strike it on the grounds that it is hearsay.

Mr. Liggett: Will you look at this also?

Mr. Pillsbury: The slip referred to will be received in evidence as Exhibit B. Any other questions of Mr. West? [96]

Q. (By Mr. Grogan): I believe when this witness was testifying there were two slips before him. Will you look at this Exhibit B again and say what that represents?

Mr. Roberts: I have a motion to strike out testimony as to what that slip shows.

Mr. Pillsbury: Motion denied. The record is clear and it has already been asked and answered. Anything else there, Mr. West?

Mr. West: No.

Mr. Pillsbury: That is all, Mr. West. Next witness.

## RANSOM HARVEY

being first duly sworn, testified as follows:

### Direct Examination

By Mr. Pillsbury:

Q. What is your name?

A. Ransom Harvey.

Q. Your address, Mr. Harvey.

A. 2062 Irving Avenue.



(Testimony of Ransom Harvey.)

Q. San Diego, California? A. Yes, sir.

Q. What is your occupation?

A. Mill foreman, assembly foreman.

Q. By whom were you employed in November of last year? [97]

A. Benson Lumber Company.

Q. Did you know Walter Olcott, who died on November 12th? A. Yes.

Q. Was he working under you?

A. Well, it is kind of a combination. He wasn't working under me that day. We only run the mill one day, a half a day, a week.

Q. Do you know anything about the circumstances under which he went to work on the Steamship Daisy Gray on November 3rd?

A. I know he was working there, and I O.K'd his card out at twelve o'clock noon.

Q. Do you know whether he was paid any wages by the Benson Lumber Company for doing any work on the Daisy Gray?

A. No, not that I know of. He could not have.

Q. Do you know what payroll men are carried on who were stevedoring on the Daisy Gray at that time?

A. I have seen their checks that they received, that is all I have seen.

Q. Was the work carried on, the work on the Daisy Gray, carried on any payroll of the Benson Lumber Company? A. No.

Q. The checks were from the Waterfront Employers Association? A. Yes, sir. [98]

(Testimony of Ransom Harvey.)

Q. Do you know anything about the Waterfront Employers Association, what it is?

A. Not a thing.

Q. (By Mr. Grogan): Was it part of your job as an employee of the Benson Lumber Company on November 3rd last year to handle the payroll and time cards of the employees?

A. Of the employees that regularly worked for me, yes.

Q. And Walter Olcott worked under you?

A. Not that day.

Q. I mean on November 3rd.

A. I O.K.'d his card out.

Q. You had direct supervision and charge of the time card and keeping track of the hours of Olcott prior to the time of his accident?

A. Yes; sometimes Mr. West took care of that, too, there, and we worked together.

Q. Did you check out Mr. Olcott on November 3rd at noon?

A. Yes, sir.

Q. And was he carried on your time record or time slips after that?

A. No, sir.

Mr. Grogan: That is all.

Mr. Roberts: No questions.

Mr. Pillsbury: That is all. Thank you. Mr. Grogan, [99] any other witnesses?

Mr. Grogan: I would like to call Mr. Taylor.

## CHARLES O. TAYLOR

being first duly sworn, testified as follows:

## Direct Examination

By Mr. Pillsbury:

Q. Your full name, please.

A. Charles O. Taylor.

Q. What is your address?

A. 3543 Grim, San Diego, California.

Q. Your occupation?

A. I am the business representative of the Millman's Union, Local 2020.

Q. Did you know Walter Olcott who died on November 12th?

A. Only as a member; not intimately.

Q. Have you any knowledge as to what nature of an arrangement stevedoring work was being performed on the Steamship Daisy Gray between November 3rd and 6th, or thereabouts, of last year?

A. Yes, I was familiar with the arrangement, because the request was made of me to make arrangements with the Longshoremen so that there would be no union trouble during the time that the men were employed on the ship.

Q. Do you know who employed these men on the Daisy [100] Gray in that week?

A. That was handled by the representative of the longshoremen of this area, Mr. French, who is a business representative like myself. He had jurisdiction of the men at the time they left the employment of the Benson Lumber Company.

Q. Do you know anything about what payroll the men were carried on?

A. Only by hearsay from the men.



(Testimony of Charles O. Taylor.)

Q. Do I understand from previous testimony that two men were sent over from the longshoremen's hiring hall, and Benson Lumber Company rustled up the rest of the men for that job? Is that your information?      A. That is correct.

Q. And the other men were members of your organization, including Olcott?

A. That's right.

Q. (By Mr. Grogan): Olcott was a member of the A. F. of L.?      A. That's right

Q. And as a longshoreman he had to get the approval of the C. I. O. to work as a longshoreman?

A. Yes, sir.

Q. And you arranged for that?

A. Yes, I had blanket approval.

Q. Did you do anything in that connection with the [101] United States Employment Office?

A. No. I took it to the War Manpower Commission of this area.

Mr. Pillsbury: May I interrupt, Mr. Grogan? What I need to know is what employer carried this man and these men on their payroll for this particular job, and directed the work.

Mr. Grogan: I bring out this testimony merely to show that they were removed from where they were employed out to another place.

Mr. Pillsbury: That still does not show me anything new or throw any direct light on the employer.

Mr. Grogan: That is all.

Mr. Pillsbury: That is all. Next witness.

Mr. Grogan: I will call Mr. Roberts.

## CLIFFORD E. ROBERTS

being first duly sworn, testified as follows:

## Direct Examination

By Mr. Pillsbury:

Q. What is your name?

A. Clifford E. Roberts.

Q. Your address?

A. 2536 Montclair Street, San Diego.

Q. Your occupation or profession?

A. Manager, Benson Lumber Company. [102]

Q. Were you such in the first week of November of last year?      A. Yes, sir.

Q. Do you know anything about the arrangements under which this crew of stevedores was working on the steamship Daisy Gray in the first week of November of last year?

A. In this particular instance, yes. We get a wire from the stevedoring company, the independent stevedoring association, when the boat leaves the north, Coos Bay, giving the approximate time when she will arrive here.

Q. Who is the stevedoring company at Coos Bay?

A. That is the Independent Stevedoring Company.

Q. Go ahead.

A. And the captain wires us, and then Mr. West takes over the job of figuring or finding out from Mr. French—we call him “Frenchie”—at the longshoremen’s hiring hall, whether he can furnish men, and in this particular instance they told us that they had about 250 stevedores down from San

(Testimony of Clifford E. Roberts.)

Pedro taking care of these convoys going out of here, and consequently he would not be able to give us only one or two men, and so I got in touch with Mr. C. O. Taylor in order to get permission for our men who had volunteered for this work to work under C.I.O. jurisdiction.

Q. Do you know what payroll these men were upon while they were working on the Daisy Gray?

A. Just that they would be working for the boat, for the [103] Freeman Steamship Company.

Q. Were they doing any work for the Benson Lumber Company while they were in the boat?

A. No, sir.

Q. Did they receive any pay from the Benson Lumber Company for the work in the boat?

A. No.

Q. Do you know whether or not the Benson Lumber Company supervised their work during the discharge of the cargo of the boat?

A. No, sir; while they were on the boat they were working for the mate—not the mate, but the——

Q. Do you know what the Waterfront Employers Association is?

A. No, sir, I am not familiar with them. I know the checks came through them, because Mr. West requested me to go down there once to pick up the checks to pass out.

Q. The pay checks for the work done on the Daisy Gray, for longshoremen coming from the Waterfront Employers Association of California, is that right?



(Testimony of Clifford E. Roberts.)

A. Yes, that's right. I went down and picked up the checks for Mr. West.

Q. Do you know whether the stevedoring work on the Daisy Gray was ever done by any stevedoring contractor?

A. No, I don't know anything in respect to that, whether they were working on a contract, or what they were [104] doing; no, I don't know anything pertaining to that.

Q. Did you ever hear of the work being done under contract?      A. No, I don't think I have.

Q. Did the San Diego Stevedoring Company, or the Atlas Company, if there is such a company, or the Crescent Wharf and Warehouse Company, or the Metropolitan Stevedoring Company, do any of the unloading of the Daisy Gray?

A. No, I don't think so. I think the way they handled it is that the boat comes in and they request San Diego stevedores to do that work.

Q. The boat handles it directly?

A. Yes, sir.

Q. (By Mr. Grogan): Mr. Roberts, do you know of your own knowledge whether Mr. Olcott was on your payroll after noon on November 3rd?

A. No.

Q. You mean you don't know, or that he was not employed?

A. I don't know anything about the accident. Mr. West makes the selection, so I had no knowledge of that.

(Testimony of Clifford E. Roberts.)

Q. Have you examined the books of the Benson Lumber Company to determine whether or not Olcott was paid any wages after noon of November 3rd, 1944?

A. No, I haven't. I know I have paid him a benefit [105] fund, which is the employee's benefit fund that we have there, where we pay the death benefit, and that was paid.

Q. That was something separate and apart from any wages?

A. That's right, nothing to do with wages.

Mr. Grogan: That is all.

Q. (By Mr. Roberts): Do you know what portion of the cargo aboard the Daisy Gray that came in here on November 3rd was consigned to Benson Lumber Company?

A. We have the records at the office, but I would not have anything to say on that boat.

Mr. Roberts: That is all.

Mr. Grogan: No further questions.

Q. (By Mr. Liggett): Do you know what this slip is here? Are you familiar with it?

A. No, I don't know what it is for.

Mr. Liggett: That is all, thank you.

Mr. Pillsbury: Next witness.

Mr. Grogan: I have no further witnesses.

Mr. Pillsbury: Mr. Roberts, I will take your evidence.

Mr. Roberts: The only evidence I have is in connection with Mr. Olcott.

Mr. Pillsbury: I thought you were going to submit [106] some medical reports.

Mr. Roberts: I will submit them now. I would like to question Mrs. Olcott with reference to her marriage.

Mr. Pillsbury: That I will postpone until the rest of the case is in.

Mr. Grogan: Mr. Pillsbury, if the evidence is unsatisfactory as to whether or not any wages were paid to Mr. Olcott after November 3rd, 1944, by the Benson Lumber Company——

Mr. Pillsbury: I have never seen a case in which there is any more evidence on the same point. There is no doubt in my mind at the present time.

Mr. Roberts: I will stipulate, Mr. Liggett, that that is or purports to be an employee's earnings and deductions statement of Walter Olcott for the period ending November 4, 1944, which shows a gross earnings in the amount of \$24.20, also showing social security and federal withholding and benefit deductions, issued by the Waterfront Employers Association of California.

Mr. Liggett: Then referring to item 18 on the other side, will it be stipulated that the Daisy Gray is one of the steamships served by the association?

Mr. Roberts: No, I could not stipulate to that.

Mr. Pillsbury: It may be received in evidence as Exhibit C. This document is on a printed form entitled, "Waterfront Employers Association of California." The [107] material on the front refers to Olcott, with certain data which has been referred



to. The material on the back is a printed list, entitled, "Company Code Numbers." Contained in the list, number 18 on the list, is, "S. Daisy Gray and owners."

Now, Mr. Roberts, I will take all the rest of your case at this time. There is a report of November 15, 1944, from R. O. Peck, M.D., which will be received in evidence as Exhibit D.

Mr. Roberts: I have nothing further in the way of documentary evidence.

Mr. Pillsbury: Have you any witnesses?

Mr. Roberts: No, sir; none except Mrs. Olcott.

Mr. Pillsbury: It is now one o'clock, and we will adjourn until two o'clock. And is it understood that the only matter to be taken up at that time is further examination of Mrs. Olcott at Mr. Roberts' request?

Mr. Grogan: I would like to talk to Mr. Thomas during the lunch hour to see whether or not we have anything further.

Mr. Pillsbury: All witnesses are excused except Mrs. Olcott, and I will resume with her testimony at two o'clock this afternoon.

(Recess.) [108]

Two o'Clock P.M.

Mr. Pillsbury: Hearing resumed at two o'clock p.m., same appearances. Mr. Liggett asks for production of information by the Firemen's Fund Insurance Company of the status of Freeman Steam Company and the Waterfront Employers

Association, as this is a matter within the knowledge of the said employer. Mr. Roberts, could you now enter into a stipulation that the Waterfront Employers Association is an association of companies engaged in port and harbor maritime work, principally stevedoring; that it acts for its member companies in part to maintain a central record office of the hiring of longshoremen by its members and in part to maintain a central pay office to which longshoremen hired by its members are paid centrally for work performed for the various members of the association by funds contributed by the different members of the association for such purposes? I am speaking now of matters of general knowledge that you and I and Mr. Liggett know about and which should be made a part of the record at some proper time.

Mr. Roberts: I will so stipulate.

Mr. Pillsbury: In other words, each member of the association sends to the central pay office funds to meet the payroll of work performed for each such member weekly, and that the amounts are then paid from the central pay [109] office.

Mr. Roberts: I can't go any farther than the original stipulation.

Mr. Pillsbury: Very well. Will you stipulate, Mr. Roberts, that the Waterfront Employers Association does not itself do any stevedoring work in the contract with ships?

Mr. Roberts: I cannot stipulate to that. I do not know it to be a fact. I assume it to be a fact.

Mr. Liggett: Is Mr. Roberts in a position to stipulate that the Freeman Steamship Company used the services of the Waterfront Employers Association for the procuring of stevedores for the Daisy Gray in the port of San Diego in the period between November 3rd and November 6th, inclusive, of 1944?

Mr. Roberts: No, I cannot do that. I will, however, make inquiry, and if they are, I will place that matter in the record.

Mr. Pillsbury: I think you have a prima facie case of that type through Exhibit 6. Anything else?

Mr. Liggett: No. [110]

CORA E. OLCOTT

previously sworn, recalled for completion of cross-examination, testified as follows:

Cross-Examination

(Continued)

By Mr. Roberts:

Q. Mrs. Olcott, I think I asked you this question about noontime, and I don't remember whether you gave me an answer. Did you examine Mr. Olcott to see if there were any marks or bruises or swelling on any part of his body? A. Why, yes.

Q. Was there any such evidence of injury?

A. No, it is all inside.

Q. When Mr. Olcott came home on the afternoon of November 6th, had he seen the doctor at that time? A. No, not that I know of.



(Testimony of Cora E. Olcott.)

Q. When did he see the doctor?

A. The next day, Tuesday.

Q. That would be November 7th?

A. Yes, sir.

Q. Did he see the doctor on November 8th?

A. Yes, sir.

Q. And on November 9th? A. Yes.

Q. Where did he see the doctor on those dates?

A. At his office.

Q. He went to the doctor's office every day? Is that right? A. Every day.

Q. His condition became worse?

A. Until Friday, he wasn't able to go.

Q. That was the 9th, was it?

A. On the 10th.

Q. How did he get to the hospital?

A. The neighbors took him.

Q. Did you notify Dr. Peck that he could not come to the office?

A. He knew himself on Friday.

Q. Had Mr. Olcott ever been in any other accident? A. No.

Q. He had never lost a day's time from work on account of any injury? A. No.

Q. As far as you know?

A. No, not as far as I know, but I knew him over nineteen years.

Q. Did he have a hernia before this accident?

A. No, he had nothing. He never had a cold in his life, or anything; never took a dose of medicine.

(Testimony of Cora E. Olcott.)

Q. With reference to your marriage, you stated that you were married in Tijuana on August 26th, is that what [112] you said, of 1926?

A. Yes, that is the only time he was off from his work.

Q. Can you tell me where in Tijuana you were married? A. I don't know.

Q. Do you know whether it was an official government building, or was it a church?

A. It was not in a church.

Q. Not in a church?

A. No. I don't remember. It has been so long ago, and we never had thought of the thing before.

Q. Do you know whether it was a minister or an official of the government that married him and you, or a priest?

A. It was not a priest. He was something of a— Well, I don't know what he was. He did that all himself, I didn't have anything to do with it.

Q. You were there?

A. Yes, I was there when the ceremony was performed.

Q. Who else was present?

A. Some Spanish fellow and his wife.

Q. Did you know this Spanish fellow?

A. I don't know them. They introduced me to them, but I did not know who they were.

Q. You were introduced to them at the ceremony? A. Yes, as a witness. [113]

Q. You had never seen them before?

A. No.

(Testimony of Cora E. Olcott.)

Q. Were they friends of Mr. Olcott?

A. They were acquaintances. I did not ask them if they were his friends. He knew everyone there. I did not know anyone.

Q. After you were married did you obtain some sort of a paper from the person performing the ceremony?

A. Yes, got a paper, a certificate like my first marriage, as I understand it.

Q. Was it in English or in Spanish?

A. I think it was both, I think it was. Our names were written in English.

Mr. Roberts: That is all.

Q. (By Mr. Grogan): Do you have a marriage certificate?

A. No, I misplaced it; I don't know where it is. I don't keep papers anywhere. I haven't kept any.

Q. Have you endeavored to get a copy of it?

A. Yes. We could not find it.

Q. Have you gone to Tijuana or sent anyone to Tijuana to get a copy of the marriage certificate?

A. Yes, I went down to Tijuana to see if I could locate the place, but I could not find it, because I haven't been there for eighteen years, you see.

Q. When did you go? [114]

A. I don't remember. It has been a month; maybe two or three weeks.

Q. Did you inquire at the government offices there? A. Yes, that is where I went.

Q. And they told you they had no record of it?

A. They could not find it.



(Testimony of Cora E. Olcott.)

Q. Did they tell you whether or not they had a record of it?

A. They did not say whether they had ever had any or not, but they could not find that then.

Q. They could not find a record of it?

A. That's right.

Q. (By Mr. Pillsbury): Have you lived with Mr. Olcott continuously since August 26, 1926, as his wife?

A. Every day, yes.

Q. You lived publicly together as husband and wife?

A. Publicly and honorably.

Q. During the whole time?

A. Yes.

Mr. Pillsbury: I have no further questions.

Mr. Roberts: I will request a continuance of at least fifteen days to enable me to make such inquiry and investigation with reference to, first of all, the marriage and divorce, or at least the divorce from Mr. Hartshorn, and the marriage at Tijuana. I will require at least fifteen [115] days to do that.

Mr. Grogan: I would also like a say in that.

Mr. Liggett: I will have no objection to it.

Mr. Pillsbury: The hearing will remain open for three weeks, during which time either side may request further proceedings upon proper showing of necessity. If I don't receive any request for further proceedings or further time within the three weeks mentioned, I will consider the matter ready for submission, without further notice, for a decision.

Mr. Liggett: I have a witness here who knows something about the matter of the marriage, at least saw the certificate. He came in at noon, and if you want to hear from him, I would like to put him on.

Mr. Pillsbury: Very well.

### JOHN ROBERTS

being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Pillsbury:

Q. What is your name?

A. John Roberts.

Q. What is your address?

A. 3171 F Street, San Diego 2, California.

Q. What is your occupation?

A. I work in a laundry. [116]

Q. Do you know Mrs. Olcott here?

A. I do.

Q. How long have you known her?

A. Oh, about nineteen or twenty years.

Q. And did you know Mr. Olcott?

A. Very well.

Q. How long did you know him?

A. Since about nineteen or twenty years, along in there.

Q. What information have you with reference to the marriage of Mr. and Mrs. Olcott?

A. Well, we were intimate friends, very intimate. He came to me when he was going to lay off, and he said, "Jack, I am going to get married." And he said, "Don't say anything, just keep it quiet." And he went away and got married, laid off a week, and he came by our house and was going

(Testimony of John Roberts.)

to rent a house, and we lived on 36th Street at the time, in the 4300 block, and he brought Mrs. Olcott—that was the first time I ever saw her—brought her and took her, and my wife, and we went down to see the house he was going to rent on 47th Street, and that was in the 4200 block on 47th, and he told me he was married. We used to say almost anything to each other, because we were so intimate. I said, “What did you do? You went down there! Couldn’t you find a priest in San Diego?”

He said, “I didn’t get married by a priest. We got [117] married by a preacher.”

He took the license out of his pocket, and I can’t tell you much about it. I saw it was a marriage license. That was eighteen years ago.

Q. Did you notice what language it was in?

A. Yes; it was in Spanish.

Q. (By Mr. Liggett): Where were you working at that time?

A. I was working at the Benson.

Q. Did you and Mr. Olcott both work at the Benson Lumber Company together?

A. Yes, for years, many years. I worked for Benson Lumber Company in the nineties.

Q. (By Mr. Grogan): Do you know if Mr. and Mrs. Olcott lived together as husband and wife from that time on?

A. I do. He introduced himself as her husband, and her as his wife.

Q. Can you read Spanish?



(Testimony of John Roberts.)

A. No, I can't say I do. I know it when I see it. I can't read it, but I can tell you it is Spanish. I can't talk it, either.

Q. (By Mr. Roberts): Mr. Roberts, how do you know it was a marriage certificate?

A. How do I know? How would you know?

Mr. Pillsbury: Answer the question.

A. I know by looking at it, of course.

Q. How?

A. Well, I don't know just how you want me to define that.

Q. What did the paper look like to you?

A. It looked like an official paper. It was a license. There was "Licencia" there; I saw that. And, of course, "Licencia," in Spanish, is, "License," in English. It is pretty near the same as it is in English, very much the same.

Q. How big was the paper?

A. Oh, about perhaps the size of that, somewhere near that. A certificate form.

Q. About half the size of a letterhead, or two-thirds letter size, perhaps?

A. Something like that.

Q. Did it have any seal on it?

A. It did, but I never paid any attention to the seal. He just showed it to me. I wasn't interested in it, and I did not think I would have to say about it twenty years later.

Mr. Roberts: That is all.

Mr. Liggett: That is all.

Mr. Grogan: That is all.

Mr. Pillsbury: Anything else? [119]

The Witness: He introduced her to my wife and I as, "My wife, Mrs. Olcott."

Mr. Pillsbury: All right. Thank you, very much.  
Hearing closed. [120]

EXHIBIT A

Waterfront Employers Association of California,  
Kress Building, 122 West Fifth Street, Long  
Beach 2, California.

December 16, 1944

Liggett & Liggett  
Attorneys at Law  
502 U. S. National Bank Bldg.  
San Diego, California.

Reference: File No. 822-56

Walter Olcott, Deceased

Gentlemen:

In reply to your letter of December 11 and after receiving affidavit of surviving widow, please find attached our check number 246 in the amount of \$5.83 made out to Cora Olcott.

This check is being presented in lieu of check number M 33922 which was made out to her deceased husband.

Yours very truly,

WATERFRONT EMPLOYERS  
ASSN. OF CALIF.

/s/ E. J. BAIRD

EJB/nj

Asst. Secretary-Treasurer





EMPLOYEE'S NAME

Walter Olcott

THIS IS A STATEMENT OF YOUR  
EARNINGS AND AUTHORIZED  
DEDUCTIONS MADE BY

*ExB*  
BENSON LUMBER CO.  
SAN DIEGO, CALIFORNIA

PERIOD ENDING	REG. HRS.	REG. RATE	O-TIME HRS.	O-TIME RATE	TOTAL EARNED	S. S. I.	P. E. I.	ABT.	AIR MAIL	BONDS	INC. TAX	AMOUNT OF CHECK
11-8-44	12	1.13			13.56	.14	.24					13.28

GRAPHIC BY G. H. PATENT NO. 1,751,405

DETACH HERE TO PRESENTING









EXHIBIT D

R. O. Peck, M.D.

1011 Medico-Dental Bldg., San Diego 1, California

15 November 1944

Mr. Harry Le Barron

Fireman's Fund Indemnity Co.

608 San Diego Trust & Savings Bank Bldg.

San Diego 1, California

Reference: Mr. Walter Olcott

Longshoreman

Employer: S. S. Freeman Steamship  
Co.

Date of injury: November 6, 1944

Dear Mr. Le Barron:

\* \* \*

Comment: Apparently, the patient was lifting and under the strain forced a small portion of the small intestine into the internal inguinal ring. This caused a fixation of the ileum which resulted in gangrene of  $\frac{1}{4}$  inch of the intestine, perforation and peritonitis. Also, the fixation of the small bowel resulted in volvulus during a period of three or four days.

The patient's general condition was very poor. His low leukocyte count, his age and cyanosis were poor prognostic signs. However, the only possible hope was to eliminate the intestinal obstruction and close the perforation.

In my opinion this is a compensable injury and death resulted from abdominal strain sustained while working.

An autopsy was performed under the direction of the Coroner's office.

Yours truly,

By /s/ R. O. PECK, M.D.

ROP: if [124]

State of California,  
County of San Diego—ss.

I, Charles C. Otis, a Shorthand Reporter called on behalf of the Deputy Commissioner, do hereby certify that the above and foregoing is a full, true, and correct transcript of the proceedings had and testimony adduced at the hearing in the above entitled matter on the date and at the place mentioned.

San Diego, California, March 30, 1945.

/s/ CHARLES C. OTIS,

Shorthand Reporter. [125]

Received April 3, 1945, District No. 13.

Copy Forwarded to Washington. [126]



United States Employees' Compensation Commission. Before Hon. Warren H. Pillsbury, Deputy Commissioner Thirteenth Compensation District.

[Title of Cause.]

REPORTER'S TRANSCRIPT

San Diego, California

Wednesday, May 23, 1945. [127]

TRANSCRIPT OF TESTIMONY AND  
PROCEEDINGS AT HEARING

Pursuant to Notice, this matter was heard before Hon. Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission, in the Jury Room of the Municipal Court, County Court House, San Diego, California, on the 23rd day of May, 1945, at 11:00 o'clock a.m.

Appearances: Claimant present in person; Liggett & Liggett, By Ruel H. Liggett, Esq., for the Claimant; Murray H. Roberts, Esq., for Freeman Steamship Co. and Fireman's Fund Insurance Co.; S. J. Grogan, Esq., for Benson Lumber Co. and Pacific Employers Insurance Co.; [128] Gerald C. Thomas, Esq., for Benson Lumber Co.

Mr. Pillsbury: Continued hearing, at the request of Murray H. Roberts, Esq., attorney for defendant company Fireman's Fund Insurance Company and Freeman Steamship Company.

The further hearing was requested to produce the testimony of witnesses with reference to the marriage of Mr. Olcott.

Mr. Roberts: Yes, and also to take the testimony of an expert witness as to what the Mexican law was at the time of the alleged marriage.

Mr. Pillsbury: Claimant is present in person, accompanied by R. H. Liggett, Attorney at Law; Defendant Freeman Steamship Company and Fireman's Fund Insurance Company are represented by Murray H. Roberts, Attorney at Law; Defendants Benson Lumber Company and Pacific Employers Insurance Company are represented by S. J. Grogan, Attorney at Law; and G. C. Thomas is here representing the Benson Lumber Company.

The only question to be taken up will be that of the marriage.

Mr. Roberts: We will call Mrs. Olcott. [129]

### CORA E. OLCOTT

having been previously sworn by the Deputy Commissioner, on being recalled to the stand, testified as follows:

#### Direct Examination

By Mr. Roberts:

Q. Mrs. Olcott, through your attorney you have filed a suit against the Fireman's Fund Insurance Company?

Mr. Pillsbury: You mean the present proceeding?

Mr. Roberts: Yes. You will stipulate to that, will you not, Mr. Liggett?

Mr. Liggett: Yes, I will stipulate to that.

Mr. Pillsbury: Do you refer to the present proceeding, the case here before me?

(Testimony of Cora E. Olcott.)

Mr. Liggett: I think counsel refers to a civil action in the Superior Court for the purpose of establishing the fact of marriage.

Q. (By Mr. Roberts): Do you remember, Mrs. Olcott, when Mr. Gallagher took your deposition on February 20th here?

A. Yes. What do I have to remember?

Q. Do you remember Mr. Gallagher asking you certain questions? A. Yes.

Q. In order to be definitely sure of the exact date that your marriage to Mr. Olcott took place, will you again tell me when it was? [130]

A. It was in August, '26, or August, 1926.

Mr. Pillsbury: Has there been any decree of the court to establish that?

Mr. Liggett: No, there has never been any hearing in the matter.

Q. (By Mr. Roberts): You and Mr. Olcott went to Tijuana by yourselves, did you not?

A. Yes, sir.

Q. And there were no friends or acquaintances that were with you? A. None.

Q. And did you personally file any application for a marriage certificate?

A. Before I went, you mean?

Q. At any time?

A. No. We got the papers down there where we went to get married.

Q. You did not sign any papers yourself?

A. No. I guess I must have signed papers. They had papers.



(Testimony of Cora E. Olcott.)

Mr. Pillsbury: May I ask, Mrs. Olcott, did you find the marriage certificate that was referred to in the last hearing?

The Witness: No, I haven't found it.

Mr. Pillsbury: Go ahead. [131]

Q. (By Mr. Roberts): What did you personally have to do in getting the papers?

A. I didn't do much of anything. We went there some place and was married, and he called in a couple that he knew, and that is all there was to it. He gave him some money and we went.

Q. You mean he called in two witnesses?

A. Yes, sir.

Q. You did not know them yourself?

A. No. They were friends of his; acquaintances down there. He was very well acquainted down there. I did not know anyone.

Q. Do you know how long Mr. Olcott had known these witnesses?

A. No, but he was well known in Tijuana for a long time.

Q. You did not make the application yourself?

A. No.

Q. Were you with Mr. Olcott when he made the license or wrote out the application?

Mr. Pillsbury: Just a moment. What is the purpose of this inquiry, Mr. Roberts?

Mr. Roberts: I am laying a foundation for testimony by an expert witness.

Mr. Pillsbury: Did you find any record at Tijuana? [132]

Mr. Roberts: No, sir.

(Testimony of Cora E. Olcott.)

The Witness: Lots of people don't find their records down there, either.

Mr. Roberts: I had hoped to have present the Civil Registrar in Tijuana, but he informed me that under Mexican law he could not come here to testify, and in view thereof I have obtained an affidavit in Spanish, and I will show you the document.

Mr. Liggett: I would not stipulate to the introduction of this affidavit, because it would preclude my cross-examination of the clerk, or the man who made it, and I am satisfied that he did not make a full search of the matter because I talked to him myself.

Mr. Roberts: I have here an affidavit in Spanish by the Civil Registrar, with the certification thereon of John F. Fitzgerald, Vice Consul of the United States of America, together with the English translation thereof, which I will offer in evidence on behalf of the Defendant Fireman's Fund Insurance Company.

Mr. Liggett: I will object to the introduction of it on the grounds that it is incompetent and on the further grounds that it is not taken as a deposition, nor is it subject to cross-examination.

Mr. Pillsbury: Objection sustained.

Q. (By Mr. Roberts): Mrs. Olcott, have you made any effort to obtain a [133] certificate of your marriage at Tijuana?

A. Yes, I looked as far as I could go. I did not know where the place is where we was in. There was a number of places there to get married at that time.

(Testimony of Cora E. Olcott.)

Q. When did you attempt to get a certificate?

A. Oh, I don't know. It has been a month ago, I guess.

Q. Where did you go at that time?

A. I don't even know that, now. We went there some place. I guess the folks there know better than I do about that.

Q. Was there someone here that went with you at that time?      A. Yes.

Q. Were the witnesses who were present at the time the marriage ceremony was performed Americans?      A. No, they were Mexicans.

Q. And you had never seen either one of them before?

A. No. I might and I might not have. I did not pay any particular notice to them.

Q. Do you know who performed the marriage ceremony?

A. No, I don't. I supposed at the time it was the Judge. That is what I supposed.

Q. Did he wear any kind of a uniform, such as a priest, or a preacher might wear?

A. No; it was not a priest, because I did not have a priest. [134]

Q. You are sure it was not a priest?

A. Yes.

Mr. Roberts: That is as far as I can go.

#### Cross-Examination

By Mr. Liggett:

Q. You stated in answer to a question asked you by counsel regarding papers that were signed there



(Testimony of Cora E. Olcott.)

at that time, that you did not know what you signed. Do you remember where it was that signed any of the papers?

A. No. In that little bureau of some kind that they get married in. There were others getting married there, so I guessed it was all right.

Q. When counsel asked you the question if you made an application yourself, I believe your answer was in the negative. What did you mean when you referred to an application?

A. That I went to look for it.

Q. He asked you about at the time of your marriage if you made an application for a license. What did you mean when you said you did not make an application?

A. I did not myself. He did. He got it himself.

Q. (By Mr. Pillsbury): What do you understand by the word "application"?

A. I don't know exactly what you mean by it, unless it was when you get your marriage. [135]

Q. (By Mr. Liggett): Were you with Mr. Olcott at all times? A. Yes.

Q. You were with him, right with him?

A. Yes, I went right with him. But I was married before and I never seen no license.

Q. Do you know what papers were produced for the signature of yourself and Mr. Olcott on that occasion?

A. As far as remembering what they looked like, I could not remember what they looked like.

(Testimony of Cora E. Olcott.)

Q. Were there some papers?

A. Yes, I had the paper. He gave it to me to take care of, but I never took care of it.

Q. Is it a fact, then, that you have no fair recollection as to what papers there were or how many there were or who signed them?

A. No, I don't.

Q. After the marriage ceremony had been performed, did either you or Mr. Olcott get a paper of some kind that you were permitted to keep or bring home with you?

A. Yes, I had a paper.

Q. How long did you have it?

A. I don't know. It has been nineteen years, and it has been hard years; it has been nothing but work.

Q. I understand that, but I want to know what you did with it. Did you bring it home? [136]

A. Yes. I brought it home.

Q. And you kept it for a time?

A. Yes, sir.

Q. But you don't know what became of it?

A. Yes, I remember of seeing my first one too, my first certificate, but I don't know what I did with them. I can't find them.

Mr. Liggett: I think that is all. We have nothing else in response to questions you have asked.

Mr. Roberts: We may have something else on redirect, later.

Mr. Pillsbury: You may recall her later.

Mr. Roberts: I have Mr. Jesus Ruiz, whom I will call as a witness. Mr. Ruiz does not speak English. I have here Mr. Fred Noon, a local attorney, who will interpret.

Mr. Liggett: I ask for Mrs. Olcott to change seats with another gentleman so I can have another interpreter.

Mr. Pillsbury: Yes, bring another chair or two up, please.

Fred Noon, Esq., is duly sworn by the Deputy Commissioner to act as interpreter. [137]

### JESUS RUIZ

having been first duly sworn by the Deputy Commissioner, through the Interpreter, testified as follows:

#### Direct Examination

By Mr. Roberts:

Q. What is your name? A. Jesus Ruiz.

Q. Where do you live, Mr. Ruiz?

A. Tijuana.

Q. What is your business or profession?

A. I am a lawyer.

Q. Are you admitted to practice in Mexico?

A. Yes. I have a title which was given to me in May of 1910.

Q. Of what school are you a graduate?

A. School of Law of the State of Chiapas, and also Free School of Law of Mexico City.

Q. Have you held any official positions?

A. Yes.

Q. What?



(Testimony of Jesus Ruiz.)

A. In my state after I was admitted to practice, I served as attorney general of justice of the state.

Q. Of what state? A. Chiapas.

Q. What courts are you admitted to practice in?

A. In all of the courts of the Republic of Mexico.

Q. Will you tell the Deputy Commissioner what laws were in effect governing the marriage ceremony in Mexico in 1926, and I refer particularly to those laws which governed marriages at Tijuana, Lower California?

Mr. Pillsbury: I don't wish to try the question of the validity of the purported marriage. Any proceeding in the nature of annulment of a purported or voidable marriage should be brought in the proper court, and not before me. The question is open in this proceeding as to whether there was any marriage at all, but not the question of whether a purported marriage may or may not have been valid and in compliance with all formalities.

Mr. Roberts: The Defendant Fireman's Fund Insurance Company and Freeman Steamship Company certainly want to put in the record with reference to whether or not the Mexican laws relating to marriage were complied with, because if those laws were not complied with, it is the contention of the defendant that this widow will not be entitled to compensation benefits.

Mr. Pillsbury: If it is the contention that it is a voidable marriage, then that matter should go to some proper court for determination.

(Testimony of Jesus Ruiz.)

Mr. Roberts: It may not only be voidable, but it may be void ab initio, and that is why I want to get this testimony in.

Mr. Pillsbury: Will you tell a little more fully just [139] what you propose to show by this witness?

Mr. Roberts: I will try to prove by this witness that the laws in effect in August of 1926, as evidenced by the Civil Code, require that each party fill out and file an application, that they were required to give certain information about themselves, that they were required to be married by a Judge of the Civil Registrar, that it was necessary in order to perform a valid marriage in Tijuana at that time that both parties must have present a witness who had known them for a period of three years, and that at the time the application is made and at the time the marriage ceremony is performed the Judge of the Civil Registrar make a minute entry in the book for recording marriages at Tijuana, and that if those requirements were not complied with, the marriage never was performed.

Mr. Liggett: I would object to that offer of proof because the main question in the case is as to whether those things did or did not happen, and this witness, as I see it, cannot offer us any testimony on that unless he has made a search of the records. If his testimony is to be theoretical as an expert, I don't see how it can throw any light as to whether the many things which counsel has enumerated here has or has not been done in Tijuana.

(Testimony of Jesus Ruiz.)

Mr. Roberts: The woman's testimony is very clear about what she did not do, especially with respect to the kind of witnesses. [140]

Mr. Pillsbury: If it is shown to be a fact that the claimant and Mr. Olcott did go to some Mexican office to a place wherein people were getting married and did go through some form of marriage and that she was given a certificate of marriage, then I would not assume jurisdiction here to determine whether those formalities sufficiently complied with Mexican law. That question is one which should come up, if at all, in proceedings to annul a marriage, and which is a matter for the courts. In so far as there may be a contention, if there is one, that she did not go to Tijuana, did not go to any person, that there was no effort to have the marriage made, that question would be open and you could offer evidence on that.

Q. (By Mr. Roberts): Mr. Ruiz, are there records kept in Tijuana of the marriages performed during the year 1926?      A. Yes.

Q. Where are those records kept?

A. In the office of the Judge of the Civil Registrar. There are two places where they are kept. One is in Tijuana, and the other is in Mexicali, in case one should be destroyed.

Q. Have any of the records maintained in Tijuana ever been destroyed since 1925?

A. No, I have been there all those years myself.

Q. Did you at anybody's request make an examination of the books kept at the office of the



(Testimony of Jesus Ruiz.)

Civil Registrar for [141] the purpose of determining whether or not there was a record of the purported marriage between Walter Olcott, deceased, and Cora Olcott or Cora Hartshorn during the year 1926?

A. I don't remember the names. On entering the court room here I saw this lady here and remembered her as one who had asked me to look up some records for her.

Mr. Pillsbury: Mrs. Olcott, could you by any chance have used your maiden name at the time of the marriage?

The Claimant: I took my maiden name.

Mr. Pillsbury: What is your maiden name?

The Claimant: Kinzer.

Mr. Pillsbury: Did you use that name at Tijuana?

The Claimant: Yes, I did use my own name. I did not use my former husband's name.

Q. (By Mr. Roberts): Did Mrs. Olcott give you her name and the name of her husband, or what names did she give you?

A. She gave me two names, but I don't remember them because they are in English. I personally went to look for them, because I saw she was very much interested and I personally went through the books and I could not find the marriage record.

Q. Over what period of time or during what years was the search made?

A. All of the year of 1926, the whole year.

Q. How did you make your search? [142]

A. Page by page, entry by entry.

(Testimony of Jesus Ruiz.)

Q. (By Mr. Pillsbury): What names did you look up? What names did you search for?

A. I don't remember. It is impossible for me to remember it. The only thing I can remember is having seen the lady here in the room. I also made more of a search. As I could not find it, before I left I suggested to the clerk in the office that he assist her in every way that he could in looking through some of the other years.

Mr. Roberts: May I be permitted to ask this witness who is legally authorized to perform marriage ceremonies in Tijuana?

Mr. Pillsbury: Yes, or was at that time.

A. In that year, since 1917 up until 1932, the laws in effect were the laws of domestic relations, and in accordance with that law there was, as there is now, one official of the Civil Registrar. He is the Judge of the Civil Register, and that official is the one who performs all marriage ceremonies.

Q. Mr. Ruiz, what were the requirements of Mexican law with reference to filing of an application for a marriage in Tijuana at that time?

A. May I get the Code?

Mr. Pillsbury: Just state what it is.

A. There must be filed a petition to the official of the Civil Registry, a written application, and that application must be signed by the man and by the woman who wish to marry. It must also be signed by the father and mother of both contracting parties in case they are alive, and by two witnesses for both parties, who have known them for three

(Testimony of Jesus Ruiz.)

years before the marriage. In that condition it should be expressed the name of the bride and the groom. The names of the father and mother of each one of them should also be stated, where they lived, what was the occupation, their age, and the oath of their being no impediment to the marriage. The question of residence was taken very much into consideration, because only those could marry whose domicile was that of the official registrar. That is all.

Q. (By Mr. Pillsbury): May I ask, was there only one person in Tijuana in 1926 who could solemnize a marriage?

A. Yes. There is only one in each population in accordance with the law, and there was only one in Tijuana at that time.

Q. Could a judge of the civil court perform a marriage ceremony? A. No.

Q. Or the mayor of the town or any other public officer?

A. No; only in some towns where there is no judge of the civil register and where there is a mayor. In places [144] where there is an official of the civil register, nobody else can perform the ceremony.

Q. Cannot a priest or minister of the gospel perform a marriage, or could he at that time in Lower California?

A. No, sir. Since 1884 up to date priests cannot marry any individuals unless they are married first by the civil registrar.



(Testimony of Jesus Ruiz.)

Q. There was such a thing as a religious marriage, was there not?

A. No, that is prohibited. It must first be a civil marriage, and priests cannot marry two persons unless they bring a certificate of marriage of the civil registry. If such minister or priest married a couple without such certificate, he would be violating the law.

Q. There was a judge of the civil registry in Tijuana in 1926, August of 1926?

A. I am sure there was.

Q. Are there applications recorded?

A. Yes, they are recorded, because the procedure is as follows: the petition is filed; the judge calls on each of the persons who have signed an application, one at a time, in order that they may say whether or not that which is written is true. When the applications are presented to the judge, he calls them all in to ratify it. Then after ratifying the application he fixes a time within eight days, and then when they are all present again he asks those who are to be married if they ratify their applications still, and if they still wish to be married, he then declares them to be married in the name of the law and in the name of society, and all that procedure is thereupon recorded in a book. There is a record made, written in a special book and in that book the married persons sign and the witnesses sign and all those who were present sign. The book is called the Book of Registry of Marriages, and that is kept in such manner.

(Testimony of Jesus Ruiz.)

Q. When was Mrs. Olcott at the office of the Civil Registry?

A. About three or four months ago, more or less, as I recollect. I don't remember exactly.

Q. What conversation did Mrs. Olcott have with you at that time?

A. She said it was very necessary that she prove she was married to a man who had suffered an accident; that she had lived with him during all of her life, and that it was necessary she have what she would be entitled to in order to live. For that reason I was interested, and I personally went through the books. I felt sorry for the lady, and I personally went to the office of the Civil Registry. After looking through the record there I was convinced that there was no record of her marriage.

Q. (By Mr. Roberts): In your opinion, if the requirements of law were [146] not complied with, as you have outlined them here, would there have been a legal marriage?

Mr. Liggett: Objected to as calling for an opinion and conclusion of the witness, and also irrelevant, incompetent and immaterial.

Mr. Pillsbury: Sustained. I will receive evidence as I said, but on the question of whether or not any attempted or purported marriage was in fact made, but not on the validity of any purported marriage.

Mr. Roberts: I don't follow your reasoning. May I have it a little more explicitly?

(Testimony of Jesus Ruiz.)

Mr. Pillsbury: You may offer any evidence you wish to whether Mr. and Mrs. Olcott did go to Tijuana or not, to officials there, for the purpose of getting married. And if it should appear that it is apparent that there was some marriage ceremony actually performed and a certificate given the parties, the question of whether that complies in all respects with the Mexican law, or its legal effect, is to be determined in the courts rather than by me. In other words, it would be in the nature of a suit to annul or set aside an invalid marriage, which is a judicial matter.

Q. (By Mr. Roberts): Do you have any knowledge of your own as to the accuracy and the completeness of the records of marriages in Tijuana during 1926?

Mr. Liggett: I object to that as calling for an opinion [147] and conclusion of the witness, and no proper foundation laid.

Mr. Pillsbury: Objection overruled.

A. The marriages legally held are properly registered or recorded, and in those records is shown the truth of what was done.

Q. (By Mr. Pillsbury): Are there any other records of marriages there, not of legal marriages, that you had in mind?

A. No. But when I referred to marriages legally held, I meant that there are many ceremonies which are not legal and proper. But at that time, in 1926, there were not so many of those fake marriages.



(Testimony of Jesus Ruiz.)

Q. Who are these people who have been performing marriages not legally right?

A. I don't know exactly. I would like to know them. There are many offices which say, "Law Office," all along the whole street. That is where it is done.

Q. Do they perform marriage ceremonies in those offices you have mentioned?

A. I know of one instance where I was working in the office of the Judge of First Instance that false marriage certificates and false divorce decrees were presented, some made in Ensenada and some in Tecate, and there wasn't any such marriage or such divorce.

Q. Tell me, what were the written residence requirements for a valid marriage in Tijuana in 1926? [148]

A. They have always been, according to the Civil Code, six months of actual residence and doing business.

Q. By both parties?           A. For both.

Q. Then, an American cannot legally cross the border and be married in Mexico? Is that correct?

A. No.

Q. For an American couple to go across the border and get married and come back, that is not a legal marriage?

A. They did not get married in Tijuana.

Q. Did they in 1926?

A. At that time the Governor of the State could waive that requirement of residence, but inasmuch

(Testimony of Jesus Ruiz.)

as there had been many abuses of that privilege, since that time it has not been granted.

Q. Isn't it a fact that many people from the United States have gone across the border and had some form of marriage ceremony performed and came back with a certificate?

A. They went over there, and the man and woman executed a power of attorney for others to represent them and be married for them in the State of Chihuahua where there is a special law, the law of marriages by proxy.

Q. How about people, men and women, going to Tijuana and going through some form of ceremony before some officer and being given a marriage certificate and told they are married and come back again, isn't that done to a [149] considerable extent?

A. What happens is this: I wish to admit the sin of my own town, and it is time that it was corrected. A couple does go to Tijuana to get married. They sign a power of attorney, and that power of attorney is sent to the State of Chihuahua so that they can be married by an attorney-in-fact over there. However, the man in Tijuana who does this work is not an employee of the government nor does he represent the law. I, personally, have not seen this actually done, but it is the common talk, and I have heard evidence to the effect that they go through a ceremony in Tijuana in much the same manner as a valid marriage, "Do you accept this woman as your wife?" and, "Do you accept this

(Testimony of Jesus Ruiz.)

man as your husband?" and that they declare them married, the couple would not want to pay the \$25.00, or whatever the fee is. But there is no actual marriage performed. The marriage is not performed until the power of attorney reaches the city or town in the State of Chihuahua, when the marriage is performed there by proxy, and the certificate of marriage returned from Chihuahua to the couple.

Q. The certificate, then, is not given to the parties at the time of the ceremony in Tijuana?

A. No, not at the time of the ceremony. Afterwards the certificate is sent by mail, and that is the certificate which is legal. [150]

Q. Has that been done occasionally in past years?

A. They did not do it in 1926, because, as I stated before, there was no necessity for this, because Americans could come across the line and the Judge of the Civil Registry was permitted to marry them by a special dispensation of the Governor of the State.

Q. Do all of those marriages necessarily appear in the registry of civil status?

A. Yes. Which do you mean?

Q. All of the cases of Americans going across the border in 1926 and becoming married?

A. Yes, all of them. This is necessary, because in Mexico you cannot prove the status of the persons without registration or a record.

Q. In a case that I have had before me some years ago that Mr. Roberts is acquainted with, of Mrs. Cowie, the evidence showed that about nine-



(Testimony of Jesus Ruiz.)

teen hundreded—I have forgotten the date—she and Mr. Cowie went across the border at Tijuana, went through some form of marriage that same day and came back and she presented a paper purporting to be a marriage certificate in Spanish by some officer in Tijuana. I don't know whether that was verified by checking the files but how would you account for that sort of situation?

Mr. Roberts: I would like to object to the question upon the grounds that it is incompetent, irrelevant, immaterial, and the answer would not tend to prove or disprove [151] any issues in this case.

Mr. Pillsbury: Objection overruled.

A. The following might be done: Often people come to my office and say, "We are married, and here is our certificate." What they present is not a marriage certificate, but a sort of notice given by the official who performed the ceremony, in which it state, "Mr. So-and-so and Mrs. So-and-so were married on such-and-such a date, and the record of the marriage is in the book so-and-so and on page so-and-so." That is the date which they have so that when they wish a copy of the certificate of marriage they can receive it by paying the cost of \$7.00. There are, however, some instances in which persons who are married in Tijuana are very much interested in getting a copy of the marriage certificate at once, and in that case they pay a special fee to the clerk, who will remain at his desk and not go out to eat and will stay there and make it up for him. That is all. If I had to take my daughter, for instance, to

(Testimony of Jesus Ruiz.)

get married and I had urgent need for a copy of the decree of marriage now, I would pay \$25.00 or \$30.00 extra, and they would give me a copy the same day.

Q. In the case you have just mentioned of the people going to somebody, some official, and receiving such a paper, will there necessarily be a record of that in the register of civil status?

A. You mean in the case of the man or wife coming in [152] to me and handing me that notice?

Q. Yes.

A. The notice is always true, correct, and it serves the purpose of permitting the groom and bride to go to a church and be married religiously.

Q. Will the registrar of the civil status you mentioned in that case have a record of that marriage?

A. Yes, it is all there.

Q. What I am trying to find out is, Is there some way of an American going across the line to Tijuana and going through what they believe to be a marriage ceremony and getting something which looks like a certificate and yet there not being a valid marriage recorded on the register of civil status?

A. No, that was not the practice in 1926. At that time there were no proxy marriages; they were married legally; there was no necessity for them to commit that crime.

Q. Is it a practice now?

A. That is the general topic of conversation in the streets of Tijuana, but personally I have no

(Testimony of Jesus Ruiz.)

knowledge of it. If I knew exactly who it was who was doing it, I would already have gotten him into jail.

Q. If Americans go across the border into Tijuana now and go through a marriage ceremony and come back with a certificate and do not have three months residence in [153] Mexico, or any residence in Mexico, how would you explain that situation?

A. Possibly they obtained a dispensation of the Governor. It is covered by dispensation, much as when minors are married.

Mr. Pillsbury: Mr. Roberts?

Mr. Roberts: I have no further questions.

Mr. Pillsbury: Mr. Liggett?

#### Cross-Examination

By Mr. Liggett:

Q. Mr. Ruiz, did you ever search the records over in Mexicali regarding this particular marriage between the Olcotts?

A. No. I saw the originals, which are in Tijuana. The copies which are in Mexicali, I did not see.

A. When you speak of originals, they are both originals, are they not?

A. Yes, they both are valid.

Q. It is a fact, is it not, that all of these records are written in longhand and not in typewriting of any kind?

A. There are some in print. When there are many applications in a day, the applications are filled



(Testimony of Jesus Ruiz.)

in on a printed form, but the record is always written by hand. The applications are forms to be filled out, but the record is always in handwriting. [154]

Q. It is also true, is it not, that many of the marriage records at Tijuana have no index pertaining to them?

A. Yes, they all have indices, almost all of them. There are some very old books which have no indices, but that is before 1919 when they began there.

Q. Is it not also true that during the year 1926, or a part of the year 1926 and all of the years 1927 and 1928 that there are no indices at all?

A. I think they exist. I have an idea that they do. I could not be sure that there were not.

Q. Isn't it also true that many of the records are written in handwriting that is almost illegible, almost impossible to read?

A. All are written by hand, but you can read them, well, by paying close attention. Some are indistinct and some are fair, but they can be read.

Q. Is it also true that approximately seventy-five per cent, that is to say, three-quarters of all the marriages in the book for the year 1926 are between couples or people having American names rather than Mexican or Spanish names?

A. Yes, there were lots of marriages at that time.

Q. And nearly all of those people were people who came over to Mexico from the United States?

A. Yes.

Q. And they came over there to be married and returned again to the United States immediately after the ceremony?

(Testimony of Jesus Ruiz.)

A. I don't know whether they returned immediately, but I do know that many of them came over to be married.

Q. And it is also true that at that time the matter of procuring both divorces and marriages by proxies through powers of attorney were also prevalent there, is it not?

A. At that time there were no divorces or marriages by proxies. Now there are, yes, in Chihuahua.

Q. There were then in Chihuahua, weren't there? A. No.

Q. When did the law in Chihuahua come in effect? A. Which law?

Q. The one with reference to marriages and divorces?

A. Divorces about eight years ago, more or less, and marriages about a year and a half or two years ago.

Q. It is also true, is it not, Mr. Ruiz, that certain marriage records are kept in Mexico City, referring to marriages performed in Lower California?

A. No, and for this reason: all of the registrations are kept at the capitols of the states or territories. Up to the year 1919 the records for Tijuana were kept in Ensenada. From 1919 up to this date they have been registered in Tijuana and one copy sent to Mexicali. Never have copies been sent to Mexico City. [156]

Q. (By Mr. Pillsbury): Mexicali is the capitol of the state?

(Testimony of Jesus Ruiz.)

A. Mexicali is the capitol of the Northern District of the Territory of Lower California, now.

Mr. Liggett: I think that is all.

Q. (By Mr. Pillsbury): Let me ask you again, did you find the record for 1926 well and carefully kept and comparatively complete, or incomplete?

A. Yes, they are in order and well kept.

Q. Is there any likelihood, in the case of Americans going across the border to be married in Tijuana in 1926 or later, that the ceremony would be performed and the papers would be filled out and that for any reason they would then not be recorded?

A. That is, that the marriage was not performed?

Q. No. The marriage was performed, but the papers not recorded, for any reason?

A. No, because they have to sign the record. The record of the procedure is written in longhand in a bound book, the pages of which are numbered on both sides, and you cannot extract the leaves from the book, and at the conclusion of the ceremony the book must be signed at the foot of the written procedure.

Q. Does it require a separate fee to have the papers recorded after the marriage is performed?

A. They have to pay the fees to the court or to the judge, and a fee to the state.

Q. And is there another fee for recording after that?

A. There is no recording fee. It is right in the bound book. The marriage record is right in the book.



(Testimony of Jesus Ruiz.)

Q. At the time of the solemnizing of the marriage?

A. Yes. That is, the performing of the ceremony, the solemnizing of the marriage, is all entered in the book and the signing of the book. That is what we call the solemnizing of the marriage. Without that record being signed there is no marriage.

Q. I am not speaking of the validity of what they do. Here when the ceremony is performed the papers are signed by the person performing the ceremony and they are then sent over to the county clerk's office to be recorded. Is there any practice like that in Tijuana for marriages?

A. No. The judge who marries anyone in Tijuana has his book and writes it in the book.

Q. At the time?

A. At the time of performing the marriage.

Mr. Pillsbury: Any other questions of this witness?

Q. (By Mr. Grogan): Mr. Ruiz, at the time of Mrs. Olcott—the lady sitting here at the counsel table—at the time Mrs. Olcott came and met you at the marriage registry three or four months ago, as you have testified, did she tell you her name [158] and the name of her deceased husband?

A. She told me the name of the two for whom I searched the record. That is necessary, because in the margin of the record the names of the married parties appear.

Mr. Grogan: That is all.

(Testimony of Jesus Ruiz.)

Q. (By Mr. Pillsbury): You don't remember what names she gave you?

A. No, I don't. I just recognized the lady as I came in.

Mr. Grogan: Let the record show that.

Mr. Liggett: Mrs. Olcott, do you remember the conversation with Mr. Ruiz that he is mentioning?

The Claimant: Yes; more than has been spoken of.

Mr. Pillsbury: Anything else of Mr. Ruiz?

Q. (By Mr. Liggett): When you looked up the index or the document for Mrs. Olcott, how did you have her name spelled in your mind? How did she tell you her name was spelled, and what letter did you look under?

A. She wrote on a small piece of paper the name of the man and her name, and I took the paper. She said, "Here are the names." I then went away and looked for the record.

Q. And were those the only names, the spellings of those names, that you looked under, that she gave you? A. Yes, no more than that. [159]

Q. She gave you the name of Olcott, didn't she?

A. I don't remember. It is impossible for me to remember.

Q. Did you look under any other possible spellings of that name, such as Holcott, spelled with an "H," or Wolcott, spelled with a "W," or Alcott, spelled with an "A"?

(Testimony of Jesus Ruiz.)

Mr. Roberts: I object to the question. He just said he does not know. He took a piece of paper on which the names were written.

Mr. Pillsbury: Objection overruled.

A. Yes, I looked under similar names, as well as the names which she gave me, at the office of the civil registrar, and the clerk there joined with me and we looked together.

Q. Did you look beyond the year 1926, either before or after?

A. Two years before, and the year 1926, and two years after, five years altogether we looked. I also asked the lady if she remembered in what building she had been married, and if it was on the lower floor or upstairs. She could not explain to me how she got married.

Mr. Liggett: That is all.

Mr. Roberts: That is all.

Mr. Liggett: The only evidence that I have to present at this time would be the testimony of one or two other people who have known the Olcotts for several years past and [160] have known that they have lived together and conducted and deported themselves and represented themselves to be husband and wife. If that can be stipulated, that such has been the case, I won't put them on, but if it cannot be stipulated, I will have to put on my witnesses.

Mr. Pillsbury: Would it be stipulated that such witnesses, if called, would testify to that effect?



Mr. Roberts: Yes, I think we could stipulate to that. What I want to know now is, do you propose to put Mrs. Olcott on the stand to testify to any conversation she had with Mr. Ruiz at Tijuana? The only reason I ask that is that I will let him go now if you do not expect to do that.

Mr. Pillsbury: I think we should inquire a little further on that. Mrs. Olcott, will you take the stand?

CORA E. OLCOTT

recalled, testified as follows:

By Mr. Pillsbury:

Q. Mrs. Olcott, I believe you indicated a moment ago you recall talking with this gentleman, Mr. Ruiz, who has just testified. A. Yes.

Q. Did you give him the names to look up in the marriage book and records? A. Yes.

Q. What names did you give him? [161]

A. I gave him my maiden name and Mr. Olcott's.

Q. Is there anything else you want to state about that conversation?

A. He said he could not understand Mr. Liggett or the lawyers here. He said cases of that kind——

Q. You are speaking of Mr. Ruiz now?

A. Yes. Cases of that kind they had to prove that if they lived together for a number of years, that it was settled——

Q. Anything else?

A. That was all of importance, that they didn't have to—that they were man and wife.

Mr. Pillsbury: One more question from Mr. Ruiz.

## JESUS RUIZ

recalled, testified as follows:

By Mr. Pillsbury:

Q. Mr. Ruiz, was there any such thing as a common law marriage in Mexico in 1926?

A. In 1926, no. That was the decision of 1917; prior to 1917 there was such a law. Eight years, it was.

Mr. Pillsbury: Anything else?

Mr. Roberts: That is all I have. I think it would be feasible, if it is possible to arrange it, to have a hearing at Tijuana so that we could take the testimony of the clerk or the judge of the civil register, to give the deputy [162] commissioner an opportunity to personally examine the record. I don't know whether that can be arranged or not. Do you think so, Mr. Ruiz?

Mr. Ruiz: Anybody can go there.

Mr. Roberts: Could we get the testimony of the clerk of the civil register? Would he give testimony?

Mr. Ruiz: The book itself. You have a certificate from the judge.

Mr. Roberts: What I want to know is, if we went to Tijuana, could we take his testimony there.

Mr. Ruiz: Yes. He can also come here. I can assure you of that.

Mr. Pillsbury: Mr. Liggett is given one month in which to have a search made, personally or otherwise, of the marriage records at Tijuana or Mexicali, or both, and let me know whether he desires fur-

(Testimony of Jesus Ruiz.)

ther proceedings. At the expiration of that period, if I don't hear from him, I will take under consideration Mr. Roberts' request for an opportunity to strengthen his evidence by a deposition or hearing, if possible, under stipulation or otherwise, at Tijuana, and review the records if it appears necessary at that time. [163]

State of California,  
County of San Diego—ss.

I, Charles C. Otis, a duly qualified shorthand reporter, certify: That the foregoing is a full, true, and correct transcript of the proceedings had and testimony adduced at the hearing held before said Deputy Commissioner in the Jury Room of the Municipal Court, County Court House, City of San Diego, County of San Diego, State of California, on the 23rd day of May, 1945, between the hours of eleven o'clock a.m. and one o'clock p.m. of said day.

In Witness Whereof, I have hereunto set my hand at my office in the City of San Diego, County of San Diego, State of California, on this 11th day of June, 1945.

/s/ CHARLES C. OTIS,  
Shorthand Reporter. [164]

Received June 14, 1945. District No. 13.

Copy forwarded to Washington. [165]



October 3, 1945

Walter Olcott, 1017-42

Consulate of Mexico

San Francisco, California

Attention: Senor Ballestero

Legal Advisor

Dear Senor Ballestero:

I am taking advantage of your offer to make some further inquiry for this office through Mexican government sources with reference to the contention of a valid Mexican marriage at Tijuana. You will recall discussing this matter with me in the presence of Mr. E. R. Kay one of the attorneys for the defendants, recently.

The general problem is that the right of Mrs. Olcott to a death benefit for the fatal injury sustained by her husband at San Diego on November 6, 1944 depends upon the establishment of her claim that she was married to Mr. Olcott at Tijuana, Mexico on August 26, 1926. She testified that they were married at a place where several couples were gathered for the purpose of being married and where marriage ceremonies were being performed. At other times she states she was under the impression that her marriage was performed by a "preacher." She says a former marriage certificate, in Spanish, was given them, which has since been lost, and that there were two witnesses to the marriage, Mexican nationals, who were old friends or acquaintances of her husband. There being no evidence impugning her credibility, I am accepting her statement as true

as far as it goes. She lived with Mr. Olcott continuously from the day of the asserted marriage until the date of his death on November 6, 1944, the parties holding themselves out to the community as to be husband and wife.

On the other hand a gentlemen named Jesus Ruiz, a lawyer of Tijuana, testified that he has had a check made through the official records of marriages at Tijuana and no record appears of the marriage of these parties.

Duplicates are kept at Nogales but apparently no search has been made there. If the marriages were validly performed, it would be shown on such records with one exception, that so-called proxy marriages under power of attorney are permitted by Mexican law in which the actual record would be at Chihuahua or in some other State of the Republic of Mexico. However, he testified that such proxy marriages were not being performed and were not valid in the year 1926 or before approximately two years ago.

[Notation]: Copy mailed Mr. F. W. Crawford, Atty., Kohl Bldg., S. F., 11-5-45. EB. [166]

Several questions arise upon which I would appreciate any help that can be obtained from an impartial and authoritative source such as yourself or the Consulate to assist in determining as follows:

- (1) Are the records of marriages at Tijuana for a period including the year 1926 carefully, completely and accurately kept.

- (2) Upon the information stated above, is it possible or impossible that Mr. and Mrs. Olcott may have been validly married at Tijuana, notwithstanding the absence of an official record as testified to.
- (3) If you should happen to be in Tijuana in the near future as you indicate, would you be able to look through the records for that year and see what you can discover.
- (4) Is it possible, notwithstanding the absence of such record that Mr. and Mrs. Olcott may have been colorably married at Tijuana, i.e., that they might have appeared before some person who might by argument be supposed to have some authority even though such authority does not now appear with complete validity.
- (5) How can one reconcile the so relatively large number of Americans going across the Border to Mexican towns such as Tijuana and returning with purported marriage certificates and believing themselves to be married, on the one hand, with an indicated much smaller number of cases in which records of such marriages are found in the legal register of marriages.

It seems to be a matter of common knowledge that more American couples go through some form of ceremony across the Border, are given some form of certificate and return in the belief that a marriage has been performed, than Mexican law as to resi-



dence requirements, etc. would permit to be married with entries in the register of marriages performed by proper authority.

Thanking you for any help you can give me in determining the real facts and probabilities of the case, I remain

Yours very truly,

WARREN H. PILLSBURY,  
Deputy Commissioner,  
13th Compensation District.

P.S. If a search should be made of the records, the information I have is that it [167] it was asserted to have been performed on August 26, 1926. Name of the husband was Walter Olcott. Mrs. Olcott states she was married under her maiden name of Cora Kinzer Hartshorn and search might be made under the name of Cora Hartshorn.

WHP

WHP:s

CC to Mr. E. R. Kay, Attorney at Law, 233 Sansome Street, San Francisco, California; Mr. Murray H. Roberts, Attorney at Law, Citizens Bank Building, Wilmington, California; Mr. Ruel Liggett, Attorney at Law, 502 U. S. National Bank Building, San Diego 1, California. [168]

Mario Ballesteros, "Edificio Lelevier," Ensenada,  
Baja California, Mexico

November 9, 1945

United States Employee's Compensation  
Commission

Thirteenth Compensation District  
417 Market Street, Room 318  
San Francisco, California

Attention: Mr. Warren H. Pillsbury  
Deputy Commissioner  
File: Walter Olcott, 1017-42

Gentlemen:

1. I have thoroughly checked the records of marriages at the Civil Register Office at Tijuana, Lower California, Mexico, and I have found that said marriages for a period of 31 years, including the year 1926, are carefully, completely, and accurately kept, as well as legally maintained.

2. and 3. When I examined said records as stated above, I found that there was no records of marriage of Mr. and Mrs. Walter Olcott on August 26, 1926, or for any time during the year of 1926.

4. According to article 46 of the Civil Code then in effect, which is worded as follows: "The civil status of persons can only be proved by the respective entries in the register. No other document nor method of proof is admissible to prove the civil status, except in the cases provided for by articles 45 and 358." (Art. 45: "When no registers have

existed, or they have been lost or destroyed, or effaced, or some of the leaves are missing on which it might be supposed the records was made, proof of the fact or act by means of instruments or witnesses may be received; but if one of the registers has been rendered useless and the duplicate exists, the proof shall be taken from the latter, without admitting any other class of proof." And art. 358: "In the cases of abduction or violation, when the time of the offense coincides with the conception, the tribunals may, at the instance of the interested parties, declare the paternity."); from the information stated above, it is impossible that Mr. and Mrs. Olcott were validly married at Tijuana. The Civil Register Offices have been in existence in Tijuana and instituted since 1914, and in this particular case, the records having not destroyed or effaced, and since none of the leaves are missing on which it might be supposed the record was made, and since therefore, no proof of the fact or act by means of instruments or witnesses may be received; and there being a duplicate book of the register which does not contain any record of such a marriage, it is impossible that Mr. and Mrs. Olcott could have been legally or colorably married in Tijuana. They might have appeared before some person, but without any authority to perform marriages.

5. The number of purported marriages by American citizens in Tijuana is not as large as commonly believed. The purported marriages which are supposed to have been performed in Tijuana, of which



records no exists, are, without doubt, done by the parties for their own convenience or for other illegal purposes. [169]

Also, when I examined said records as stated above, I found that there was no records of marriage under Mrs. Olcott's maiden name of Cora Kinzer Hartshorn on August 26, 1926, or for any time during the year of 1926.

Wishing that this information will be complete as requested, I remain

Yours very truly,

/s/ MARIO BALLESTEROS. [170]

168

November 14, 1945

✓ Fireman's Fund Insurance Co.  
Mr. Murray H. Roberts, Atty.  
Citizens Bank Bldg.,  
Wilmington, Calif.

Walter Olcott, 1017-42  
Stewart Bldg. May 6 1946

✓ Pacific Employers Ins. Co.  
1039 South Hope Street  
Los Angeles, California

✓ Liggott & Liggott, Attys. at Law  
302 U.S. National Bank Bldg.,  
San Diego, California

✓ Fireman's Fund Insurance Co.  
Attn. Mr. H.R. Kay  
233 Sansome Street  
San Francisco, California

Gentlemen:

Some time ago I had occasion to mention the Olcott to Mr. Mario Ballasteros who was at the time attorney for the Mexican Consulate at San Francisco. He engaged to make some investigations for me of the alleged Mexican savings of Mrs. Olcott, and today I received his letter of November 9, 1945 and enclose copies to all parties. I am informed that Mr. Ballasteros has now left the service of the Mexican Government. He is apparently located at Acapulco. Unless objection is received, his report may be added to the record and considered as in evidence.

Yours very truly,

WARREN H. PILLBURY  
Deputy Commissioner  
13th Compensation District

✓ WHP:s

✓ cc to Mrs. Cass H. Olcott, 1521 - 17th St., La Brea, California  
✓ Fresno Steamship Co. 705 Fifth Bldg., San Francisco, Calif.  
✓ Brown Lumber Co., P.O. Box 2130 San Diego, California





December 5, 1945.

Walter Olcott, Deceased.  
(Cora E. Olcott), Widow.  
File 1017-42  
Injured 11-6-44.

Senor Mario Ballesteros,  
"Edificio Lelevier,"  
Ensenada, Baya California  
Mexico.

Dear Senor Ballesteros:

Please accept my hearty thanks for your letter of November 9, 1945, giving information as to the status of marriages at Tijuana and particularly the contents of the official records with reference to an alleged marriage of Walter Olcott.

There is one other question in the case upon which, if you could inform me without putting yourself to further effort, it would be much appreciated. This is with reference to "proxy" marriages. There is some testimony in the record that such marriages were valid according to the law of the State of Chihuahua, without the parties going to that State for the purpose of having a marriage performed but that the law of Chihuahua did not authorize such proxy marriages until some time later than the Year 1926. The question is, therefore, whether such "proxy" marriages were valid and recognized in any of the states in Mexico at any period of time which would include August 26, 1926. It would not be necessary to know how many of such states per-

mitted proxy marriages at that time if there were several, but only the names of one or more of such states, if any.

Wishing you success in your new work, I remain,

Yours very truly,

WARREN H. PILLSBURY,  
Deputy Commissioner,  
Thirteenth District.

WHP:eb [172]

December 14, 1945.

Re: Walter Olcott (Deceased) 1017-42  
Cora E. Olcott, Widow.  
Inj. 11-6-44.

United States Embassy,  
Mexico, D. F.,  
Mexico.

Attention: Legal Department

Gentlemen:

I have before me for decision under the Longshoremen's and Harbor Workers' Compensation Act, the above case in which decision depends upon the validity of a purported Mexican marriage alleged to have been contracted at Tijuana between American citizens. One legal matter remains incomplete in my files and I am writing to ask whether you can supply me with any legal information upon the question.

The situation presented is that the claimant, Mrs. Cora Olcott, has testified that she went through

some form of marriage ceremony at Tijuana with the deceased employee, Walter Olcott, on August 26, 1926. No record can be found in the official records at Tijuana of such marriage. However, there is some evidence in the record concerning so-called "proxy" marriages which could be performed through the laws of other states of the Mexican Republic without the parties going to such state for the solemnization of the marriage. There is evidence that the law of Chihuahua permits such "proxy" marriages but that such law did not take effect until several years after 1926. As there might be some possibility that the alleged Olcott marriage could have been a "proxy" marriage at Tijuana, the question upon which I would appreciate some help is whether such "proxy" marriages were permitted under the laws of any state of the Republic of Mexico for a period which would include August 26, 1926.

Thanking you for any help you can give me, I remain,

Yours very truly,

WARREN H. PILLSBURY,  
Deputy Commissioner,  
13th District.

WHP:eb [173]



Number: [Illegible]. File: 73-48/571.2/34.

[In Pencil] 1017-42

San Francisco, California,  
December 10, 1945.

Mr. Warren H. Pillsbury,  
Deputy Commissioner,  
U. S. Employees' Compensation Commission,  
417 Market St., Room 318,  
San Francisco 5, California.

Dear Mr. Pillsbury:

I regret very much to tell you that this Consulate is not in a position to furnish you the information requested in your letter of December 5, 1945, due to the fact that we do not have in our library the marriage laws of the different States in Mexico.

It is suggested, therefore, that you write the American Embassy in Mexico City, Mexico, whose legal department, I am sure, can provide you with the desired information.

Regretting our inability to be of assistance, I am,

Sincerely yours,

/s/ EDMUNDO GONZALES,

Consul of Mexico.

Copy of above sent the following named: Liggett & Liggett, Attorneys. 502 U. S. National Bank Bldg., San Diego, Calif.; Stephen J. Grogan, Attorney, 215 West 7th St., Los Angeles; Murray H. Roberts, Attorney, Citizens Bank Bldg., Wilmington; Mrs. Cora E. Olcott, 4501 71st St., La Mesa, Calif.; John H. Black, Atty., 233 Sansome St., S. F. 12-20-45-eb. [174]

Embassy of the United States of America

Mexico, January 17, 1946.

Mr. Warren H. Pillsbury, Deputy Commissioner,  
United States Employees' Compensation  
Commission,  
13th Compensation District,  
417 Market Street, Room 318,  
San Francisco 5, California.

Sir:

Reference is made to your letter dated December 14, 1945, in which you inquire whether proxy marriages were permitted under the laws of any State of the Republic of Mexico in the year 1926.

While diplomatic and consular officers are prohibited by the Foreign Service Regulations from interpreting the laws of a foreign country, and therefore, the Embassy is unable to answer specifically the question of whether proxy marriages in general, or any one marriage in particular might have been valid in Mexico in the year of which you speak, it is the desire of this office to be of such assistance as may be proper to enable you to consult with a duly qualified attorney to obtain the information you seek. To this end, the Embassy quotes below in translation Article No. 157 of the Mexican Civil Code of the Federal District and Territory of Lower California, issued on March 31, 1884:

“Article 157. Marriages may be performed before the officials stipulated in the law, and with all the formalities therein required.”

The Mexican Law Governing Family Relations of April 9, 1917, amendatory of the above-mentioned Civil Code, both of which were in effect in 1926 for the Federal District and Territory of Lower California, also states:

“Article 3. On the day and hour designated for the performance of the marriage, there must be present before the Civil Judge, at the place the latter may have determined upon, the parties thereto, in person or through a special representative legitimately appointed, and in addition [175] two witnesses for each one of the parties themselves, to vouch for their identity, as well as the parents or guardians of the parties, if any, and if they should desire to attend the ceremony \* \* \*”

It is impracticable at this time for the Embassy to determine which of the Mexican States, in addition to the Federal District and Territory of Lower California, were in 1926 subject to the provisions of the Civil Code above cited and which States had Civil Codes of their own. Should this information be required, it would be necessary for the Embassy to institute inquiries through official channels of the Mexican Government, a procedure entailing considerable delay to which you may not find it necessary to recur.

Very truly yours,

For the Ambassador:

/s/ M. L. STAFFORD,

American Consul General.



Copy to—Mrs. Cora E. Olcott, 4501 71st St., Le  
Mesa, Calif.; Liggett & Liggett, Attorneys at  
Law, 502 U. S. Ntl. Bnk Bldg., San Diego,  
Calif.; Murray H. Roberts, Atty., Cit. Bnk  
Bldg., Wilmington, Calif. 1-30-46-eb. [176]

[Letterhead Mario Ballesteros]

January 31, 1946.

United States Employees' Compensation  
Commission,  
Longshoremen's and Harbor Workers'  
Compensation Act (13th District),  
417 Market St., San Francisco, California.

Attention: Mr. Warren H. Pillsbury  
Walter Olcott  
File 1017-42  
Injured 11-6-44

Gentlemen:

In response to your last letter, please be advised  
that, to the best of my knowledge, it is true that  
“proxy” marriages were valid according to the law  
of the State of Chihuahua, without the parties going  
to that State for the purpose of having a marriage  
performed, but that the law of the State of Chihua-  
hua did not authorize such proxy marriages until  
some time later than the year 1926. It is true also  
that such “proxy” marriages were not governed by  
any law nor permitted by any State of Mexico to be  
valid and recognized prior and at August of 1926.

Hoping that this information will be enough to clear any point or doubt you have in mind,

I am, as always, very sincerely yours,

/s/ MARIO BALLESTEROS.

Copy of above sent: Mrs. Cora E. Olcott, 4501 Seventy-first Street, La Mesa, Calif.; Liggett & Liggett, Attorneys, 502 U. S. Ntl. Bnk Bldg., San Diego, Calif.; Mr. Murray H. Roberts, Attorney, Cit. Bank Bldg., Wilmington, Calif.  
2/8/46-eb.

JC:MB [177]

United States Employees' Compensation  
Commission, 13th Compensation District

[Title of Cause.]

### COMPENSATION ORDER AWARD OF DEATH BENEFIT

Such investigation in respect to the above-entitled claim having been made as is considered necessary and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

#### Findings of Fact

That on the 6th day of November, 1944, Walter Olcott, husband of the claimant herein, was in the employ of the employer, Freeman Steamship Company, above named, at San Diego Harbor, in the State of California, in the 13th Compensation District, established under the provisions of the Long-

shoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by Fireman's Fund Insurance Company;

That on the said day the said employee, while performing service for said employer, Freeman Steamship Company, sustained personal injury occurring in the course of and arising out of his employment and resulting in his death on November 12, 1944, as follows: While lifting heavy timbers on said November 6, 1944, he strained his abdomen, sustaining as a result thereof a small inguinal hernia which became strangulated and was followed by peritonitis and death; [178]

That defendant, Benson Lumber Company, was not the employer of said employee at the time of his injury and is entitled to be dismissed herefrom with its insurance carrier, Pacific Employers Insurance Company;

That notice of injury was given within thirty days after the date of such injury, to the Deputy Commissioner and to the employer;

That medical treatment was not furnished by defendants and that defendants are by stipulation liable for the reasonable cost of such medical, surgical and hospital treatment, the amount thereof to be fixed by further proceedings if the parties are unable to agree thereon;

That the death of the employee was not due to his unreasonable refusal to submit to medical or surgical treatment;



That the average earnings of the employee herein at the time of his injury and death exceeded \$37.50 a week;

That Cora E. Olcott, claimant herein, born February 27, 1879, is the widow of the deceased employee, Walter Olcott, was married to him on August 26, 1926, and was living with him as his wife and dependent upon him for support at the time of his injury. That she is entitled to a death benefit at the rate of \$13.13 a week beginning with November 12, 1944, payable in installments each two weeks or monthly at her election until the further order of the Deputy Commissioner, subject to the limits as to duration of payments, etc., contained in said Act;

That the reasonable expense of burial of the employee was over \$200 and is owing to Benbough Funeral Parlor, San Diego, California;

That claimant's attorney, Ruell H. Liggett, has rendered legal service [179] to claimant in the prosecution of her claim for which a fee is approved in the sum of \$100.00 and lien granted therefor upon compensation benefits herein awarded.

Upon the foregoing facts, the Deputy Commissioner makes the following:

#### Award

That the employer, Freeman Steamship Company, and the insurance carrier, Fireman's Fund Insurance Company, shall pay to the claimant compensation benefits as follows:

(1) To claimant the sum of \$200.00 on the burial expense, payable direct to said undertaking firm, Benbough Funeral Parlors, San Diego;

(2) To claimant the sum of \$13.13 a week beginning with November 12, 1944, and payable in installments each two weeks or monthly at her election thereafter until the further order of the Deputy Commissioner, subject however to the payment therefrom of the sum of \$100.00 to her attorney, Ruel H. Liggett, upon his lien for attorney's fee.

The claim is rejected as to defendants Benson Lumber Company and Pacific Employers Insurance Company, for the reason that said Benson Lumber Company was not the employer of the said employee at the time of his injury.

Given under my hand at San Francisco, California, this 18th day of February, 1946.

WARREN H. PILLSBURY,  
Deputy Commissioner, 13th  
Compensation District.

WHP:eb:gl

[Endorsed]: Filed May 13, 1946. Edmund L. Smith, Clerk. [180]

In the District Court of the United States in and  
for the Southern District of California, South-  
ern Division

In Admiralty—No. 706

FREEMAN STEAMSHIP COMPANY and  
FIREMEN'S FUND INSURANCE COM-  
PANY, Libelants,

vs.

WARREN H. PILLSBURY, Deputy Commis-  
sioner, U. S. Employees' Compensation Com-  
mission,

Respondent.

### MOTION FOR SUMMARY JUDGMENT

Now comes the respondent, Warren H. Pillsbury, deputy commissioner, by his attorney, and moves this Honorable Court to enter, upon the pleadings and upon the record herein, summary judgment in favor of the defendant, dismissing the action and in support thereof, the defendant says:

- (1) That as shown by the pleadings and the record filed therein, the libelants do not state a cause of action or claim against this defendant upon which relief can be granted.
- (2) That as shown by the pleadings and the record therein, the findings of the deputy commissioner in the compensation order complained of are supported by evidence, and



under the law said findings are final and conclusive and not subject to judicial review. [181]

- (3) That as shown by the pleadings and the record filed therein, the compensation order complained of is in all respects in accordance with law.
- (4) That the pleadings show that there is no issue as to any material fact and the respondent is, as a matter of law, entitled to judgment dismissing the libel.

CHARLES H. CARR,  
United States Attorney.

RONALD WALKER,  
Assistant United States Attorney, Chief of Civil  
Division

/s/ CLYDE C. DOWNING,  
Assistant United States  
Attorney.

Attorneys for Respondent Warren H. Pillsbury,  
Deputy Commissioner.

[Endorsed]: Filed Aug. 13, 1946. [182]

[Title of District Court and Cause.]

MEMORANDUM IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT

This case arises upon a libel for judicial review of a compensation order filed on February 18, 1946, by Deputy Commissioner Pillsbury pursuant to the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927 (44 Stat. 1424; 33 U.S.C.A. sec. 901, et seq.).

Cora E. Olcott filed claim for compensation on account of the death of her husband, Walter Olcott, on November 12, 1944, which resulted from injuries he sustained on November 6, 1944, while employed as a stevedore by the Freeman Steamship Company at San Diego Harbor, California. The claim was contraverted by the employer and insurance carrier, the Firemen's Fund Insurance Company, and hearings were duly held by the deputy commissioner on March 7, 1945, and May 23, 1945. The transcripts of testimony taken at said hearings have been made part of the answer of Deputy Commissioner Pillsbury filed herein and should be read in connection therewith.

The libellants allege in substance that the compensation order filed on February 18, 1946, is not in accordance with law for the reason that there is no evidence sufficient to support the finding of [183] the deputy commissioner to the effect that Cora E. Olcott is the widow of the deceased within the meaning of the Longshoremen's and Harbor Workers' Compensation Act.

## The Facts

The deputy commissioner in the compensation order complained of found the facts with reference to the employee's fatal injuries and marital status to be in part as follows:

“That on the 6th day of November, 1944, Walter Olcott, husband of the claimant herein, was in the employ of the employer, Freeman Steamship Company, above named, at San Diego Harbor, in the State of California, in the 13th Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by Fireman's Fund Insurance Company;

“That on the said day the said employee, while performing service for said employer, Freeman Steamship Company, sustained personal injury occurring in the course of and arising out of his employment and resulting in his death on November 12, 1944, as follows: While lifting heavy timbers on said November 6, 1944, he strained his abdomen, sustaining as a result thereof a small inguinal hernia which became strangulated and was followed by peritonitis and death; \* \* \*

“That Cora E. Olcott, claimant herein, born February 27, 1879, is the widow of the deceased employee, Walter Olcott, was married to him on August 26, 1926, and was living with him



as his wife and dependent upon him for support at the time of his injury. That she is entitled to a death benefit at the rate of \$13.13 a week beginning with November 12, 1944, payable in installments each two weeks or monthly at her election until the further order of the Deputy Commissioner, subject to the limits as to duration of payments, etc. contained in said Act; \* \* \*

Before discussing the evidence, which in our opinion supports the finding complained of, it may not be inappropriate to invite attention to the following well established principles of compensation law. [184]

The Longshoremen's Act should be liberally construed in favor of the injured employee or his dependent family: *Baltimore & Philadelphia Steamship Co. v. Norton*, deputy commissioner, 284 U. S. 408 (1932); *Fidelity & Casualty Co. of New York v. Burris*, 61 App. D. C. 228, 59 F. (2d) 1042 (1932); *Associated General Contractors of America, Inc., et al. v. Cardillo*, deputy commissioner, 70 App. D. C. 303, 106 F. (2d) 327 (1939); *DeWald v. Baltimore & O. R. Co.*, 71 F. (2d) 810 (C.C.A. 4, 1934), certiorari denied October 8, 1934, 293 U. S. 581.

In the absence of substantial evidence to the contrary the presumption is "That the claim comes within the provisions of this Act"; section 20(a) of the Longshoremen's Act.

The burden is on the plaintiff to show that there was no evidence before the deputy commissioner to

support the compensation order complained of in the bill: *Grant v. Marshall*, deputy commissioner, 56 F. (2d) 654 (Wash. 1931); *United Employees Casualty Co. v. Summerous*, 151 S. W. (2d) 247 (Tex. 1941); *Nelson v. Marshall*, deputy commissioner, 56 F. (2d) 654 (Wash. 1931); *Gulf Oil Corporation v. McManigal*, deputy commissioner, 49 F. Supp. 75 (W. Va. 1943).

The findings of fact of the deputy commissioner supported by evidence should be regarded as final and conclusive and not subject to judicial review: *South Chicago Coal & Dock Co., et al. v. Bassett*, deputy commissioner, 309 U. S. 251 (1940); *Del Vecchio v. Bowers*, 296 U. S. 280 (1935); *Voehl v. Indemnity Insurance Co. of North America*, 288 U. S. 162 (1933); *Crowell deputy commissioner v. Benson*, 285 U. S. 22 (1932); *Jules C. L'Hote, et al. v. Crowell*, deputy commissioner, 286 U. S. 528 (1932), 71 C. J. 1927, sec. 1268; *Parker, deputy commissioner v. Motor Boat Sales, Inc.*, 314 U. S. 244 (1941); *Marshall, deputy commissioner v. Pletz*, 317 U. S. 383 (1943). [185]

Logical deductions and inferences which may be and are drawn by the deputy commissioner from the evidence should be taken as established facts and are not judicially reviewable: *Parker, deputy commissioner v. Motor Boat Sales, Inc.*, 314 U. S. 244 (1941); *Liberty Mutual Ins. Co. v. Gray*, deputy commissioner, 137 F. (2d) 926 (C.C.A. 9, 1943); *Michigan Transit Corporation v. Brown*, deputy commissioner, 56 F. (2d) 200 (Mich. 1929); *Del Vecchio v. Bowers*, 296 U. S. 280 (1935); *Eastern*

Steamship Lines, Inc. v. Monahan, deputy commissioner, et al., 21 F. Supp. 535 (Me. 1937); Grain Handling Co., Inc. v. McManigal, deputy commissioner, 23 F. Supp. 748 (N. Y. 1938); Simmons v. Marshall, deputy commissioner, 94 F. (2d) 850 (C.C.A. 9, 1938); Lowe, deputy commissioner v. Central R. Co. of New Jersey, 113 F. (2d) 413 (C.C.A. 3, 1940); Contractors, PNAB v. Pillsbury, deputy commissioner, 150 F. (2d) 310 (C.C.A. 9, 1945).

The findings of fact of the deputy commissioner are presumed to be correct: Anderson v. Hoage, deputy commissioner, 63 App. D. C. 169, 70 F. (2d) 773 (1934); Luckenbach Steamship Co. Inc. v. Norton, deputy commissioner, 96 F. (2d) 764 (C.C.A. 3, 1938); Burley Welding Works, Inc. v. Lawson, deputy commissioner, 141 F. (2d) 964 (C.C.A. 5, 1944).

It is solely within the province of the deputy commissioner or compensation administrator to determine the credibility of witnesses, and such official may believe all or any part of the testimony according to his own sound judgment of its truthfulness and reliability: Wilson & Co., Inc. v. Locke, deputy commissioner, 50 F. (2d) 81 (C.C.A. 2, 1931); Rakowski's Case, 173 N. E. 521, 273 Mass. 363 (1930); Benjamin v. Rosenberg Bros., et al., 167 N. Y. S. 650 (1917) aff'd. 223 N. Y. 569.

The rights, remedies and procedure under the Longshoremen's Act are governed exclusively by the statute, and the powers properly to [186] be exercised by the court are those only which are expressly conferred by the said Act: Associated Indemnity



Corp. v. Marshall, deputy commissioner, 71 F. (2d) 235 (C.C.A. 9, 1934); Shugard v. Hoage, deputy commissioner, 67 App. D. C. 52, 89 F. (2d) 796 (1937); Luyk v. Hertel, 242 Mich. 445, 219 N. W. 721 (1928); Texas Indemnity Ins. Co. v. Pemberton, 9 S. W. (2d) 65 (Tex. 1928); Nierman v. Industrial Comm., 329 Ill. 623, 161 N. E. 115 (1928); Town of Albion v. Industrial Commission, 202 Wis. 15, 231 N. W. 249 (1930). Compare also: Bassett, deputy commissioner v. Massman Construction Company, 120 F. (2d) 230 (C.C.A. 8, 1941) cert. denied 62 S. Ct. 92.

In considering the evidence the deputy commissioner may give weight to "the common-sense of the situation": Avignone Freres, Inc., et al. v. Cardillo, deputy commissioner, et al., 73 App. D. C. 149, 117 F. (2d) 385 (1940).

Even if the evidence permits conflicting inferences, the inference drawn by the deputy commissioner is not subject to review and will not be reweighed: Contractors, PNAB v. Pillsbury, deputy commissioner, 150 F. (2d) 310 (C.C.A. 9, 1945); South Chicago Coal & Dock Co., et al. v. Bassett, deputy commissioner, 309 U. S. 251 (1940); Parker, deputy commissioner v. Motor Boat Sales, Inc., 314 U. S. 244 (1941); Liberty Mutual Insurance Co. v. Gray, deputy commissioner, 137 F. (2d) 926 (C.C.A. 9, 1943); Lowe, deputy commissioner, et al. v. Central R. Co. of New Jersey, 113 F. (2d) 413 (C.C.A. 3, 1940); Henderson, deputy commissioner v. Pate Stevedoring Co., Inc., 134 F. (2d) 440 (C.C.A. 5, 1943); Del Vecchio v. Bowers, 296 U. S. 280 (1935).

The following is a reference to so much of the testimony taken at the hearings before the deputy commissioner as is considered sufficient to show that the above-mentioned finding of fact of the deputy commissioner is supported by evidence. This reference is not intended to cover all of the testimony, as under the authorities it is [187] necessary only to show that there is evidence to support the finding of fact of the deputy commissioner.

Cora E. Olcott testified at the hearing on March 7, 1945, that she was married to the deceased, Walter Olcott, on August 26, 1926, at Tijuana, Mexico (T. 7, 61), and continued to live with him until his last illness (T. 7); that they had no children and were never divorced; that she is 65 years of age; that she does not have a marriage certificate (T. 8); that they were married by a preacher; that she had the papers but has since misplaced them (T. 10) (T. 9, hearing of May 23, 1945); that they were not married in a church; that the deceased made all the arrangements; that some Spanish individual and his wife acted as witnesses to the ceremony (T. 61); that these witnesses were acquaintances of the deceased (T. 62); that the deceased had been well acquainted in Tijuana for some time (T. 5, hearing of May 23, 1945); that after the ceremony she received a certificate written in both English and Spanish, that is, the names were in English; that she has since misplaced the certificate; that she went to Tijuana, Mexico, in search of the record, but has been unable to locate it (T. 62); that she inquired at the Government office at Tijuana and was told by the officials



that they could not find the record; that such officials did not tell her whether they ever had such record, but did say that they could not find the record then; that since 1926 she lived with the deceased as his wife, publicly and honorably (T. 63).

At the hearing on May 23, 1945, before the deputy commissioner Mrs. Olcott testified that many other persons could not find such records at Tijuana (T. 6); that she could not find the place at which they had been married, but that at the time she was married there were a number of places where persons might be married (T. 7); that the ceremony took place in a little bureau of some kind where [188] people go to get married and there were others getting married at the same time (T. 8).

It was stipulated at the hearing on May 23, 1945, that other witnesses if called would testify that the claimant and deceased lived together and conducted and deported themselves as husband and wife for many years (T. 33, 34).

John Roberts testified at the hearing on March 7, 1945, that he had known Mr. and Mrs. Olcott for 19 or 20 years, having been very intimate friends, and having worked with Mr. Olcott for many years; that prior to the time that they were married, Mr. Olcott came to him and told him that he (Olcott) was going to get married; that Mr. Olcott laid off a week and was married; that he then returned with his wife and resumed residence in San Diego; that shortly afterwards Mr. Olcott came by the witness' house with Mrs. Olcott and took both the witness and his wife to see the house they intended to rent; that



Olcott showed him the marriage license, and he noted that it was a marriage license in the Spanish language; that this took place about 18 years ago, and since that time Mr. and Mrs. Olcott have lived together as husband and wife, and have introduced themselves as such (T. 66).

On December 14, 1945, the deputy commissioner inquired of the American Consul at Mexico City whether it was possible in 1926 to be married in Mexico by proxy; on January 17, 1946, the American Consul replied in part as follows:

“ ‘Article 3. On the day and hour designated for the performance of the marriage, there must be present before the Civil Judge, at the place the latter may have determined upon, the parties thereto, in person or through a special representative legitimately appointed, and in addition two witnesses for each one of the parties themselves, to vouch for their identity, as well as the parents or guardians of the parties, if any, and if they should desire to attend the ceremony . . .’ (Emphasis supplied.)

“It is impracticable at this time for the Embassy to determine which of the Mexican States, in [189] addition to the Federal District and Territory of Lower California, were in 1926 subject to the provisions of the Civil Code above cited and which States had Civil Codes of their own. \* \* \*”

(Tijuana, it should be noted, is located in the Territory of Lower California.)

It is believed that the deputy commissioner's award to Cora E. Olcott as the widow of the deceased employee, in the compensation order complained of, is supported by evidence and thus supported, should, under the authorities cited above, be regarded as final and conclusive.

It appears well settled that a marriage may be established by oral testimony. *Ex parte Morgan*, 106 Cal. App. 602, 289 P. 647 (1932), and *In re McGrath's Estate*, 179 A. 599, 319 Pa. 309, 179 A. 599 (1935).

In the California case of *Ex parte Morgan*, *supra*, the Court said:

“It is well-established that a marriage may be established by the testimony of one of the parties thereto. *Budd v. Morgan*, 187 Cal. 741, 203 P. 754; *In re Richards*, 133 Cal. 524, 65 P. 1034; 38 C. J. 1335. The burden of proving a marriage rests on the party who asserts it. 38 C. J. 1321. This obligation was satisfactorily met when the plaintiff in the divorce action proved by her own testimony that she married petitioner.”

In the case of *In re McGrath's Estate*, *supra*, the Court said:

“No case, decided since removal of the disqualification of interest, has been called to our attention which held that the evidence of the surviving spouse is not sufficient without a second witness also testifying to the fact; nor is there any doubt of the competency of a sur-

viving spouse to testify where, as here, the claim is to take by devolution. It is settled in this State that, if other proof is not available, 'the marriage may be established,' as was said In re Craig's Estate, supra, 273 Pa. 530 at page 533, 117 A. 221, 22, 'by proof of reputation and cohabitation, declaration and conduct of the parties and such other circumstances as usually accompany the marriage relation. Richard v. Brehm, 73 Pa. 140, 13 Am. Rep. 733.' This is another method complete in itself, of proving marriage." [190]

Budd v. Morgan, 187 Cal. 741, 203 P. 754 (1922), cited in the Morgan case, supra, was a suit for the alienation of a husband's affections in which the Court, among other things, said:

"Section 57 of the Civil Code provides as follows:

"Consent to marriage and solemnization thereof may be proved under the same general rules of evidence as facts are proved in other cases. We are of the opinion that the intent of this section of the Civil Code was to enable parties to or persons present at the solemnization of a marriage to testify to the fact within their knowledge that such marriage actually took place; and when to such testimony the additional evidence is educed showing that since said marriage the parties thereto have deported themselves as husband and wife, a prima facie case has been sufficiently shown. Subdivision 30



of sec. 1963 of the Code of Civil Procedure, dealing with disputable presumptions, specifies as one of these presumptions 'that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage.' \* \* \* We are therefore of the opinion that the plaintiff, by the form of evidence which she presented to the trial court, sufficiently made out a *prima facie* case of the existence of the relationship between herself and Orris O. Budd of husband and wife, that the objections of the defendant to such evidence were properly overruled, and that her present contention that the same was insufficient to prove the fact in issue cannot be sustained."

A marriage *de facto* having been proved it is presumed to be according to law. *Finer, et al. v. Steuer*, 255 Mass. 611, 152 N. E. 220 (1926). In this case the Court said:

"See *Loring v. Thorndike S. Allen*, 257, 260. A marriage *de facto* being proved, it is presumed to be according to law.

"As if a marriage were proved to have taken place in France, for instance, it should seem fit to require the party who denies the marriage to prove its invalidity.' *Rayham v. Canton*, 3 Pick., 293, 297. \* \* \*"

Further, in the California case of *Ex parte Morgan*, *supra*, which was a case in which the marriage was established by the sole testimony of the wife, the Court said: [191]

“This obligation was satisfactorily met when the plaintiff in the divorce action proved by her own testimony that she married petitioner. It then became incumbent upon the latter to show that his marriage to Mrs. Morgan was invalid. \* \* \* There is also a presumption and a very strong one, in favor of the legality of a marriage regularly solemnized. \* \* \* Where a marriage in fact was established, as in the instant case (by the testimony of the wife alone), it is presumed to be legal and valid; In re Pusey, 173 Cal. 141, 159 P. 433; \* \* \* the duty of proving the contrary rests on the party who attacks it. \* \* \* and it has been held that this is so even though it requires proving a negative. Hunter v. Hunter, supra: (111 Cal. 261, 267, 43 P. 756, 757, 31 L.R.A. 411, 52 Am. St. Rep. 180) \* \* \*.” (Words in parenthesis supplied.)

A valid marriage also may be presumed to have been entered into upon evidence showing the parties had cohabitated as man and wife and acquired the reputation of being married. In re Foeld's Estate, et al., 263 N.Y.S. 327, 147 Misc. 428 (1933). Smith v. Railway Express Agency, et al., 174 S. W. (2d) 900 (Mo. 1943). Thompson v. Thompson, 236 Mo. App. 1223, 163 S. W. (2d) 792 (1942). In the case of Foeld's Estate the Court said concerning this presumption:

“It was said in Hynes v. McDermott, 91 N. Y. 451, at page 459, 43 Am. Rep. 677; ‘The presumption of marriage, from a cohabitation, ap-

parently matrimonial, is one of the strongest presumptions known to law. This is especially true in the case involving legitimacy. The law presumes morality, and not immorality; marriage, and not concubinage; legitimacy and not bastardy. Where there is enough to create a foundation for the presumption of marriage, it can be repelled only by the most cogent and satisfactory evidence.' In *Morris v. Davies* (5 Cl. & Fin. 163), Lord Lyndhurst speaking of this presumption, says: 'The presumption of law is not likely to be repelled. It is not to be broken in opinion, or shaken by a mere balance of probability. The evidence for the purpose of repelling it must be strong, distinct, satisfactory and conclusive.' In *Piers v. Piers* (2 H. L. Cas. 331), Lord Campbell said, that the presumption could be negatived only 'by disproving every reasonable possibility,' and Lord Brougham, in the same case approved the general doctrine stated by Lord Lyndhurst, in *Morris v. Davies*, and said that the presumption could be repelled only by evidence which was 'clear, distinct and satisfactory.' The presumption has been acted upon in several cases in our courts, and in some recent cases in England, which have a very direct bearing in support [192] of the finding of the jury in this case. See, also, *Matter of Grande's Estate*, 80 Misc. 450, 141 N. Y. S. 535; *In re Hoffner's Estate*, 254 N. Y. 238, 172 N. E. 483."



In *Smith v. Railway Express Agency, et al.*, supra, the Court said in part:

“If parties cohabit together as man and wife, treat each other as such, and acknowledge the existence of that relation, and thereby acquire the reputation of being married among the people, the fact of marriage may well be presumed.”

In *Thompson v. Thompson*, supra, it was said:

“Evidence of cohabitation and general repute, and a declaration and conduct of the parties, constitute primarily, strong and convincing proof of the fact of marriage (*In re Imboden's Estate*, 111 Mo. App. 220, 86 S. W. 263, loc. cit. 267); and if such evidence is not rebutted it becomes conclusive and gives rise to a presumption of marriage, which presumption is one of the strongest known to the law and “\* \* \* can be repelled only by the most cogent and satisfactory evidence.”

In California, the presumption of marriage has been written into the statute. Subparagraph 30 of section 1963, chapter 5 of the Code of Civil Procedure, provides that “a man and woman deporting themselves as husband and wife are presumed to have entered into a lawful contract of marriage.” See also the case of *De Hart v. Allen*, 43 Cal. App. (2d) 479, 111 P. (2d) 341 (1941), where the Court said:

“A judgment cannot rest on suspicion alone, and there are certain presumptions applicable here which the statute declares would be satisfactory evidence, if uncontradicted. When these presumptions furnish satisfactory evidence of the fact to be proved and are uncontradicted, they cannot be rejected arbitrarily because of suspicious circumstances in the testimony offered to support them. \* \* \* A man and woman deporting themselves as husband and wife are presumed to have entered into a lawful contract of marriage. Subdivision 30, section 1963. ‘Code Civil Procedure.’ ”

This next case, *In re Chandler’s Estate*, 113 Cal. App. 630, 299 P. 110 (1931), rehearing of 112 Cal. App. 601, 297 P. 636 denied, was a case in which the facts were strikingly similar to those in the present case. (Reference to pages of the transcript are to the hearing on March 7, 1945, unless otherwise indicated.) The parties were [193] married in Tijuana, Mexico (as in the present case (T. 7)). The widow testified that a marriage certificate had been issued to them at the time (as in the present case), and (as in the present case) was not produced (T. 62). The marriage certificate had been shown to a third party; to the widow’s mother in the Chandler case (and in the present case to one John Roberts, a close friend of the deceased with whom he worked (T. 66)). In both cases no official record of the marriage could be found (T. 62). The widow in the

Chandler case testified there was one person at the marriage ceremony among those present who was an acquaintance of her deceased husband (and in the present case the widow testified that the two witnesses to the ceremony were acquaintances of her deceased husband, they being a man and wife (T. 62)). In both cases it is undisputed that the parties continued to cohabit and live together and deport themselves as man and wife for many years (T. 34, May 23, 1945). Following the marriage in the Chandler case the couple went to the home of the widow's mother where the deceased was introduced by his wife to her mother as her husband (and in the present case, following the marriage the couple returned from Mexico and the deceased introduced Mrs. Olcott to Mr. and Mrs. John Roberts as his wife (T. 65)).

In that case, the Court, among other things, said:

“The respondent testified that she was married to Guy B. Chandler on November 22, 1909, in Tia Juana, Mexico. She testified in considerable detail as to exactly what occurred on the occasion in Tia Juana describing the parties present, including one man who knew Mr. Chandler; that an interpreter told them to write their names, which she and her husband did; that certain things were repeated that she did not remember; and that the interpreter repeated, in closing, that ‘you are now pronounced man and wife under the law.’ She further testified that



at the time a marriage certificate was given to Mr. Chandler; that the following day they returned to her mother's home in Los Angeles where she introduced Mr. Chandler as her husband; that he then showed her mother the marriage certificate which she read; that her mother read Spanish, having formerly lived in South America; that they remained at her mother's home that night and that the following day they returned to San Bernardino and she went to work in her [194] husband's store. It seems to be settled in this State that a party to a marriage may testify as to its solemnization. Section 57, Civ. Code; *In re Estate of Richards*, 133 Cal. 424, 65 P. 1034; *Budd v. Morgan*, 187 Cal. 741, 203 P. 754; *Landrath v. Ind. Acc. Comm.*, 77 Cal. App. 509, 247 P. 227. Under the circumstances it is shown there is a strong presumption that this is a legal marriage. Subdivision 30, sec. 1963, Code Civ. Proc. In *Wilcox v. Wilcox*, 171 Cal. 770, 155 P. 95, 97, the Court quotes with approval from Bishop on Marriages and Divorces:

“Every intendment of the law leans to matrimony. When a marriage has been shown in evidence, whether regular or irregular, and whatever the form of proof, the law raises a strong presumption of its legality not only casting the burden of proof on the party objecting, but requiring him throughout, in every particular, to

make plain, against the constant pressure of presumption, the truth of law and fact that it is illegal and void. Not only is this evidence, in itself, but it has been held that a presumption may under certain circumstances even outweigh positive evidence to the contrary. *Smelle v. Southern Pacific Co.* (Cal. Sup.), 278 P. 343.'

“\* \* \* In addition to this positive testimony and to the presumptions referred to, the record discloses some evidence which tends to corroborate the respondent's testimony. \* \* \* The evidence is absolutely uncontradicted that from 1909 until Mr. Chandler died, nearly twenty years later, these parties continued to cohabit and live together and deport themselves as man and wife, and through all of that time they were generally reputed and known, in the community where they lived as husband and wife.

“We think that under the circumstances here shown, all of these facts could be treated by the trial court as corroborative of, and that they support, the direct testimony of the respondent and the presumption mentioned. Lost and misplaced records of vital statistics, and even the failure to properly record such matters, are not unknown even in this country, and more especially many years ago. If lack of such official records could be taken as conclusive proof that certain facts did not exist, many men of considerable prominence could be proved to have never been born. While the absence of this record was

a fact to be considered by the trial court, it is by no means to be taken as conclusive. \* \* \*

“No other evidence was offered by the appellants in any manner contradictory or attempting to contradict the validity of the marriage in 1909, it being even conceded by them that the parties lived together and were reputed to be husband and wife from [195] that day until the husband’s death. To rebut the positive evidence of the fact of marriage in 1909 shown by the record before us, and the presumption above-referred to, it was necessary for the appellants to introduce evidence which carry conviction to the mind of the trial court. *Dierks v. Newsom*, 49 Cal. App. 789, 194 P. 518, \* \* \* When two people have lived together for nearly twenty years, under the circumstances here disclosed, the validity of their marriage should not be easily set aside.”

This case does not involve common-law status nor the validity of common-law marriage in California. The case rests upon a proper legal ceremonial marriage, proof of which is established by testimony, circumstances and cohabitation in the absence of the ability of the widow to locate record proof of the marriage.

In view of the foregoing California and other decisions, it is respectfully submitted that the finding of the deputy commissioner is supported by evi-



dence, that the compensation order is in accordance with law and that the complaint herein should be dismissed.

JAMES M. CARTER,  
United States Attorney,

RONALD WALKER,  
Assistant United States  
Attorney,

/s/ CLYDE C. DOWNING,  
Assistant United States  
Attorney,

Attorneys for respondent Warren H. Pillsbury,  
Deputy Commissioner.

W. E. BOOTE,  
Chief Counsel, U. S.  
Employees' Compensation  
Commission,

HERBERT P. MILLER,  
Assistant Chief Counsel,  
Of Counsel.

[Endorsed]: Aug. 13, 1946. [196]

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Foreword

If there is any requirement that libellants request formal leave to submit additional evidence in order to obtain a trial *de novo* of the jurisdictional question here involved, such application is hereby tendered. The libellants request leave to take the deposition of the custodian of the official marriage records in Tijuana and Mexicali. These depositions will show that no application to be married was ever made and that there was no marriage in fact in the case at bar. Libellants also request leave to offer in evidence the marriage statutes of Mexico in the original Spanish [197] with translations thereof in English, unless the Court holds—as libellants contend—that the compensation claimant was required to prove the Mexican laws with reference to a valid marriage and that they were complied with by her and the deceased.

Point Number 1

Whether the compensation claimant, known as “Cora Olcott” is the widow of the deceased, is a jurisdictional fact, as to which libellants are entitled to a trial de novo.

Section 903 (33 U.S.C.A.) provides, in part, that “compensation shall be payable under this chapter in respect of disability or death of an employee \* \* \*”

In *Crowell vs. Benson*, 285 U.S. 22, 56, the Court said:

“In the present instance, the Congress has imposed liability without fault only where the relation of master and servant exists in maritime employment and, while we hold that the Congress could do this, the fact of that relation is the pivot of the statute and, in the absence of any other justification, underlies the constitutionality of this enactment. If the person injured was not an employee of the person sought to be held, or the injury did not occur upon the navigable waters of the United States, there is no ground for an assertion that the person against whom the proceeding was directed could constitutionally be subjected, in the absence of fault on his part, to the liability which the statute creates.” (Emphasis added.)

In this case, the trial court conducted a trial de novo on the issue whether one Knudsen was actually an employee of [198] Benson. The District Court found, after a trial de novo on the law and facts, that the relationship did not exist and enjoined the enforcement of the award. The Circuit Court of Appeals affirmed the District Court. The Supreme Court affirmed the Circuit Court of Appeals, holding this was a jurisdictional question which should be tried de novo.

The same principle applies in the case at bar. Section 909 (33 U.S.C.A.) provides, in part, that “if the injury causes death, the compensation shall



be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(a) Reasonable funeral expenses not exceeding \$200.00;

(b) If there be a surviving wife \* \* \*, to such wife \* \* \* 35 per centum of the average wage of the deceased \* \* \*”

In a death case there are at least three basic and jurisdictional facts:

(a) the deceased must have been an employee of the person proceeded against;

(b) the injury causing death must have been sustained on navigable waters; and

(c) there must be a surviving wife.

The existence of an actual—not colorable or putative—surviving wife is an essential jurisdictional fact. In the absence of such relationship the deputy commissioner has no authority to even consider a claim for a death benefit.

In support of the last statement, please see: Keyway Stevedoring Co. vs. Clark, 43 F. 2d 983. Incidentally, this case brushes aside the contention of respondent that a “common-law” marriage is sufficient to entitle the claimant to an award as a “widow” for the reason that California does not recognize any such [199] marriage.

## Point Number 2

The respondent cites a number of irrelevant cases pertaining to general rules. Libellants are aware of

the general rules. However, certain of the contentions of respondent ignore fundamental propositions.

The fact that the claimant and the deceased lived together since 1926 is of no importance in establishing a marriage which would be valid in California. Section 63 of the California Civil Code is the answer to the question whether California would recognize a valid marriage between claimant and Walter Olcott in Mexico, on August 26, 1926. It provides that "all marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted are valid in this state.

Having based her claim on a purported marriage in Mexico, it was claimant's burden to prove the law of Mexico as of August 26, 1926, and the fact that the "marriage" was valid by such law. "Mrs. Olcott" did not offer any evidence as to the Mexican marriage law. Libellants did so, and the evidence is uncontradicted. When the requirements of the law are compared with what the lady testified to it is obvious that there was no marriage "which would be valid by the laws of the country (Mexico)."

The substance of her testimony as to facts is that she and Olcott went to Tijuana on October 26, 1926. She gave her conclusion that she and Olcott were "married." She had no witness to vouch for her identity. She was "married" by a "preacher."

John Roberts' (claimant's witness) testimony is of no probative value, but if full value is given to it, such testimony shows there was no valid marriage

according to the law of Mexico. He said Olcott showed him a marriage license. Olcott told Roberts, "We got married by a preacher." (R. T. proceedings of March 7, 1945, [200] p. 65, L. 26, p. 65, L. 1.)

The letter of January 17, 1946, from the American Consul, quoting from Article 3 of the Mexican marriage statutes, demonstrates that a marriage could not be solemnized by any person excepting a judge. In addition, the law required two witnesses for each one of the parties.

The finding of the deputy commissioner, in the teeth of the Mexican law, is either capricious and arbitrary, or was based upon a misconception of his function and authority. This will be the subject of Point No. 3.

"In those cases in which it is necessary to prove a marriage in fact, as distinguished from a marriage inferred by circumstances, (to wit: a common-law marriage) it must be shown that the person who solemnized the marriage was one having authority to do so, and such authority cannot be proved by his general reputation."

38 C. J. 1310;

Peo. v. Spitzer,

57 Cal. App. 593.

There is no such proof in the record. The allegations in the complaint as to the testimony of Jesus Ruiz, qualified expert on the Mexican law, are admitted in the answer.

In the case of MacArthur v. I. A. C., 220 Cal. 142, the claimant relied on a purported common-law



marriage in Canada. The California Supreme Court held that as the purported marriage was not contracted in accordance with the law of Canada, it was invalid.

In *Temescal v. I. A. C.*, 180 Cal. 637, an ignorant Mexican couple had obtained a marriage license and, thinking that was all [201] that was required, believed they were married. Because of some unusual language in the California Workmen's Compensation Act which authorized an award to any dependent of any deceased employee who was in good faith a member of the household, the Supreme Court of California affirmed the award but held that the woman was not a "wife."

Presumptions (so heavily relied upon by respondent) have no probative value in a Federal Court. (*Liberty Mutual Insurance Co. v. Gray*, 137 F. 2d 926; *Salmon Bay, etc., v. Marshall*, 93 F. 2d 1; and *New York, etc., v. Gamer*, 303 U. S. 161.) The evidence required to support an award must be substantial. (*Bernatowitz v. Nacirema*, 142 F. 2d 385; and *Fireman's Fund v. Peterson*, 120 F. 2d 547.)

### Point Number 3

The proceedings before the deputy commissioner were in contravention of the due process clause of the 5th Amendment, U. S. Constitution.

An award must be enjoined if there are any substantial errors in law.

The deputy commissioner refused to receive evidence for the purpose of proving that the purported

marriage was invalid. (Please see: R. T., May 23, 1945, p. 12, L. 2, to p. 14, L. 13; p. 19, L. 26, to p. 20, L. 9.)

In the face of such clear error the award must be enjoined. (Speakes v. Hoage, 78 F. 2d 208; Groom v. Cardillo, 119 F. 2d, 697; and Norton v. Warner, 88 L. Ed. 931.)

Conclusion

It is respectfully contended that the motion for summary [202] judgment should be denied.

Respectfully submitted,

/s/ LASHER B. GALLAGHER,  
Proctor for Libellants. [203]

Received copy of the within Memo Pltfs. and Auths. this 10th day of October, 1946.

/s/ JAMES M. CARTER,  
U. S. Attorney, Attorney.

By /s/ W. ALLEN.

[Endorsed]: Filed Oct. 10, 1946. [204]

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At a stated term, to wit: The July Term, A.D. 1946, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of San Diego on Monday, the 14th day of October, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Paul J. McCormick,  
District Judge.

[Title of Cause.]

This cause coming on for hearing on motion of respondent, filed August 13, 1946, for summary judgment; Lasher B. Gallagher, Esq., appearing as proctor for the libelants; Clyde C. Downing, Assistant U. S. Attorney, appearing as proctor for the respondent.

Motion of respondent for summary judgment is denied without prejudice.

It is ordered that the case be transferred to "M" Calendar to be heard in the Central Division and that date, heretofore set, of Nov. 12, 1946, is vacated.

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In the District Court of the United States in and  
for the Southern District of California, Southern  
Division

In Admiralty—No. 706

FREEMAN STEAMSHIP COMPANY and  
FIREMEN'S FUND INSURANCE COM-  
PANY,

Libelants,

vs.

WARREN H. PILLSBURY, Deputy Commis-  
sioner, U. S. Employees' Compensation Com-  
mission,

Respondents.

JUDGMENT OF DISMISSAL OF SUMMARY  
JUDGMENT

The Motion for Summary Judgment of defend-  
ant, Warren H. Pillsbury, in the above-entitled mat-



ter, came on for hearing on the 14th day of October, 1946, at the hour of 2:00 p.m. at San Diego in the courtroom of the above-entitled Court, James M. Carter, United States Attorney, and Clyde C. Downing, Assistant United States Attorney, appearing as attorneys for defendant, Warren H. Pillsbury, and Lasher B. Gallagher appearing as attorney for the plaintiff, and oral argument having been presented by both counsel for the defendant and the plaintiff and after examining all of the authorities submitted on behalf of both said defendant and said plaintiff and after due deliberation:

It Is Ordered, Adjudged, and Decreed that the motion of defendant, Warren H. Pillsbury, for summary judgment be and the same is hereby denied without prejudice to any further proceeding in this matter.

Dated: Oct. 25, 1946.

/s/ PAUL J. McCORMICK,  
Judge, United States District  
Court.

[Endorsed]: Filed Oct. 25, 1946. [206]

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION FOR A  
TRIAL DE NOVO ON A JURISDIC-  
TIONAL AND BASIC FACT AND MOTION  
TO SET CASE FOR TRIAL

To the Respondent Above Named, and to James M. Carter, United States Attorney, Ronald Walker, Assistant United States Attorney, and Clyde C. Downing, Assistant United States Attorney, Proctors for Respondent:

You and Each of You Are Hereby Notified that on Monday, July 14th, 1947, at the hour of 10 o'clock a.m. of said day, or as soon thereafter as said matters can be heard, in the Division of the Honorable Paul J. McCormick, in the Federal Building, Los Angeles, California, the libelants herein, will present the following: [207]

Motion for a Trial De Novo on a Jurisdictional  
and Basic Fact

Come now the libelants, Freeman Steamship Company, a corporation, and Fireman's Fund Insurance Company, a corporation, and move the Court for a trial de novo on the jurisdictional and basic fact whether claimant, known as Cora E. Olcott, was actually married to Walter Olcott and was and is the surviving wife of said Walter Olcott, upon the ground that the relationship, if any, of the claimant to the deceased Walter Olcott was and is a jurisdictional and basic fact.

Said motion is based upon this Notice of Motion and Motion for a Trial De Novo on the Jurisdictional and Basic Fact, and upon all records and files in the above action.

Motion to Set Case for Trial

Come now the libelants, Freeman Steamship Company, a corporation, and Fireman's Fund Insurance Company, a corporation, and move the Court for an order setting the above action for trial, upon the ground that it is at issue and ready to be set for trial.

Said motion is based upon this Notice of Motion and Motion to Set Case for Trial and upon all records and files in the above action.

Dated: June 26th, 1947.

/s/ LASHER B. GALLAGHER,  
Proctor for Libelants. [208]

Memorandum of Points and Authorities

The claimant is not entitled to any death benefit unless she be the surviving wife of Walter Olcott.

33 USCA, Sec. 909

Whether the claimant is the surviving wife of Walter Olcott depends entirely upon whether she was lawfully married to Walter Olcott. This question is jurisdictional and basic.

It is settled that a trial de novo is required upon application therefor on any jurisdictional fact.

Crowell v. Benson, 285 U. S. 22, 56.

Respectfully submitted,  
/s/ LASHER B. GALLAGHER,  
Proctor for Libelants. [209]



Received copy of the within Notion of Motion and Motion, Etc., this . . . . . day of June, 1947.

JAMES M. CARTER,

U. S. Attorney.

RONALD WALKER and

CLYDE C. DOWNING.

By /s/ JAMES M. CARTER,

U. S. Attorney.

By /s/ VELOXES BONHAM,

Proctors for Respondent.

[Endorsed]: Filed June 27, 1947. [210]

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[Title of District Court and Cause.]

MEMORANDUM IN OPPOSITION TO  
MOTION FOR TRIAL DE NOVO

This is a motion for a trial de novo in a proceeding for judicial review of a compensation order filed by the deputy commissioner pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, Chapter 509; U.S.C. Title 33, Chapter 18, Section 901, et seq.

The deputy commissioner in the compensation order complained of made an award to Cora E. Olcott upon a finding that she was the widow of the deceased employee. Libelants brought a proceeding for judicial review of said order under section 21 (b) of the Longshoremen's Act (33 U.S.C.A.,

section 921 (b)), and now contend in this motion that it is entitled to a trial de novo of the issue whether or not she is the widow of the deceased employee. [211]

Libelants rely upon *Crowell v. Benson*, 285 U. S. 22. A cursory examination of that case will show that there were only two issues which the court considered fundamental or basic so as to entitle the plaintiff to a trial de novo thereon, namely, whether the injury occurred upon navigable waters of the United States, and whether the employer-employee relationship existed. See pages 37, 54, 55, 62 and 64 of that opinion. On page 37, this court said:

“The Act has two limitations that are fundamental. It deals exclusively with compensation in respect of disability or death resulting ‘from an injury occurring upon the navigable waters of the United States’ if recovery ‘through workmen’s compensation proceedings may not validly be provided by State law,’ and it applies only when the relation of master and servant exists.” (Emphasis supplied.)

On page 54, the court said:

“\* \* \* These fundamental requirements are that the injury occur upon the navigable waters of the United States and that the relation of master and servant exist. \* \* \*”

As to the issues other than those mentioned above, namely, the locus of the injury and the employer-employee relationship, the court said:

“Apart from cases involving constitutional rights to be appropriately enforced by proceedings in court, there can be no doubt that the Act contemplates that, as to questions of fact arising with respect to injuries to employees within the purview of the Act, the findings of the deputy commissioner, supported by evidence and within the scope of his authority, shall be final. To hold otherwise would be to defeat the obvious purpose of the legislation to furnish a prompt, continuous, expert and inexpensive method for dealing with a class [212] of questions of fact which are peculiarly suited to examination and determination by an administrative agency specially assigned to that task. The object is to secure within the prescribed limits of the employer’s liability an immediate investigation and a sound practical judgment, and the efficacy of the plan depends upon the finality of the determinations of fact with respect to the circumstances, nature, extent and consequences of the employee’s injuries and the amount of compensation that should be awarded. \* \* \*” (Emphasis supplied.)

On subsequent occasions the Supreme Court reiterated that as to questions other than the locus of injury and the employer-employee status, the finding of the deputy commissioner, where supported by evidence, is not subject to judicial review. *South Chicago Coal and Dock Co. v. Bassett*, deputy commissioner, 309 U. S. 251 (involving the issue



whether the injured employee was a crew member—the Act excludes crew members from coverage); *Del Vecchio v. Bowers*, 296 U. S. 280 (involving whether the injury was self-inflicted—the Act excludes self-inflicted injuries from coverage); *Voehl v. Indemnity Insurance Company of North America*, 288 U. S. 162 and *Parker, deputy commissioner, v. Motor Boat Sales, Inc.*, 314 U. S. 244 (involving the issue whether the injury arose out of and in the course of employment—only such injuries are within the Act); *L'Hote, et al., v. Crowell, deputy commissioner*, 286 U. S. 528 (involving the issue whether the parents were dependent upon deceased employee—only dependent parents are entitled to compensation under the Act); *Marshall, deputy commissioner, v. Pletz*, 317 U. S. 383 (involving the issue whether the claim was timely filed—an award can only be made where the claim is filed within the time prescribed in the Act). Compare: *Cardillo, deputy commissioner, v. Liberty Mutual Insurance Co.*, 67 S. Ct. 801 (1947), involving a so-called “jurisdictional” question.

Libelants apparently reason that because “the claimant is not entitled to any death benefits unless she be the surviving wife of [213] Walter Olcott,” her status is a “fundamental or basic” issue, of the kind referred to in *Crowell v. Benson*, *supra*. In addition to not being one of the two issues specifically mentioned by the Supreme Court in that case as the only fundamental or basic issues, it must be apparent that the test of the fundamental or

basic character of the question does not turn upon whether or not its resolution one way or the other determines the entitlement to compensation since that circumstance exists as to all the issues, *supra*, which the Supreme Court held to be beyond judicial review if supported by evidence. It is, of course, axiomatic that a finding is not final if the reviewing court may determine the issue *de novo*.

Libelants confuse constitutional jurisdictional issues with statutory jurisdictional issues. The former relate to the authority of Congress, constitutionally to enact a statute and to make it applicable in certain circumstances, the existence of which circumstances is the basis for the authority to apply said law, and in the absence of which the law would be unconstitutional, if attempted to be applied. Of such were the two issues mentioned in *Crowell v. Benson*, *supra*. Statutory jurisdictional issues, however, relate not to the authority of Congress to enact the law but to the authority of the deputy commissioner to apply the law because of a limitation in the act itself. In such a category is the issue whether the injury arose in the course of employment, whether it was self-inflicted, whether it resulted in disability, whether (in death cases) the compensation claimant is within the status of those entitled to compensation upon the death of an employee from injury. In none of these circumstances could the deputy commissioner award compensation unless the facts exist which bring the case within the statute; yet as stated by the Supreme Court, there is no

right to a trial de novo as to these issues because they are not fundamental or basic, but only statutory jurisdictional issues. As stated in *Wm. Spencer & Son Corp. v. Lowe*, deputy commissioner, 152 F. (2d) 847 (C. C. A. 2, 1946) cert. den. 66 S. Ct. 1012 "a trial de novo as to statutory jurisdictional issues is not permissible" [214]

The issue whether Cora E. Olcott is the widow of the deceased employee within the meaning of the Longshoremen's Act is a statutory jurisdictional one and libelants are not entitled to a trial de novo thereon, assuming it had been seasonably demanded in the complaint which is not the case. Libelants' motion should be denied.

/s/ JAMES M. CARTER,  
United States Attorney.

/s/ CLYDE C. DOWNING,  
Assistant United States Attorney, Attorneys for  
Respondent Warren H. Pillsbury, Deputy Commissioner.

Of Counsel.

W. E. BOOTE,  
Chief Counsel,  
U. S. Employees' Compensation  
Commission.

H. P. MILLER,  
Assistant Chief Counsel.

[Endorsed]: Filed July 14, 1947. [215]



At a stated term, to wit: The July Term, A.D. 1947, of the District Court of the United States of America, for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 30th day of July, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Paul J. McCormick,  
District Judge.

[Title of Cause.]

For hearing on motion of libelants for trial de novo on a jurisdictional and basic fact and motion to set case for trial; L. B. Gallagher, Esq., for libelants; Clyde C. Downing, Ass't. U. S. Att'y, for respondent;

Attorney Gallagher makes a statement of movant's position herein citing authorities in support. Attorney Downing makes a statement in opposition. The Court thereupon orders said motion denied.

On motion of Attorney Downing, and counsel for plaintiff concurring, case is ordered to stand submitted on briefs to be filed 10 x 15, libelants to open.

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[Title of District Court and Cause.]

#### LIBELANT'S OPENING BRIEF

As part of their Opening Brief, libelants incorporate herein by reference thereto, the Memorandum of Points and Authorities filed in opposition to motion for summary judgment.

Section 1963, subdivision 30, of the Code of Civil Procedure of the State of California has no force. In *Estate of Elliott*, 165 Cal. 339, 343, the Court says:

“It is not claimed by appellant that there was any ceremony of marriage between him and the deceased other than the one of November, 1902. If that ceremony was absolutely ineffectual, the allegation of marriage was not proved by the evidence of cohabitation as man and wife, together with repute to the same effect. There is, to be sure, [217] a presumption ‘that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage.’ (Code Civ. Proc., sec. 1963, subd. 30.) But this presumption can have no force where it appears that the only attempt to enter into a lawful marriage was in fact illegal and void. (26 Cyc. 877.) At the time of the performance of the ceremony, the law of this state had been changed, so that mere consent followed by a mutual assumption of marital rights, duties, or obligations was no longer sufficient to constitute marriage. At that time there was, and ever since has been, required, in addition to consent, a solemnization authorized by the Civil Code. (Civ. Code, sec. 55.) Under the law as it existed prior to the amendment of section 55 (Stats. 1895, p. 121) marriage might be presumed from cohabitation as husband and wife, even though the intercourse had been, in its

inception, illicit. (*White v. White*, 82 Cal. 427, (7 L. R. A. 799, 23 Pac. 276).) But since solemnization has been made essential to a valid marriage, a presumption of marriage can no longer be indulged in the face of a showing that there was no solemnization \* \* \*"

Libelants desire to stress the proposition that Section 63 of the California Civil Code provides that:

"All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, are valid in this state."

It was the burden of the Applicant, having claimed that [218] she was married in Mexico, to prove that the claimed marriage would be valid by the laws of Mexico. Applicant offered no evidence whatever on this subject before the Commissioner.

"As is shown elsewhere, in the absence of statute providing otherwise, the courts of a state or country do not take judicial notice of the statutes of another state or country. Hence, except where it is otherwise provided by statute, it has very generally been held that statutes of other states or of foreign countries are regarded as matters of fact, and that when they are relied on as the foundation of a cause of action or defense, they must be pleaded."

59 *Corpus Juris*, 1202, sec. 743.



Libelants do not claim that it was necessary for the Applicant to plead the Mexican law, but it was certainly her burden to prove it and to show by substantial evidence that she and Olcott were married pursuant to the requirements of the Mexican law.

The testimony of Jesus Ruiz, page 11, et seq., Transcript of May 23, 1945, conclusively established that if the testimony of the Applicant was literally true there was in fact no marriage in accordance with the laws of the Republic of Mexico.

Respectfully submitted,

/s/ LASHER B. GALLAGHER,

Proctor for Libelants.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Aug. 16, 1947. [219]

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[Title of District Court and Cause.]

### RESPONDENT'S ANSWERING BRIEF

Since libelants and respondent in their respective briefs, which were submitted upon the motion for summary judgment, discussed fully the law and the facts relating to this case, respondent, like the libelants, incorporates herein by reference thereto the memorandum submitted by respondent in support of the motion for summary judgment.

Libelants apparently realize the decisiveness in the instant case of the presumption of subdivision

30 of section 1963 of the Code of Civil Procedure of the State of California that "a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage." They seek to avoid it by contending that it is not applicable, relying upon the old case of *Estate of Elliott*, 165 Cal. 339, wherein it was stated that said presumption can have no force "where it appears that the only attempt to enter into a lawful marriage was in fact illegal and void." [221] In the instant case, however, there was no evidence that the marriage between the deceased and claimant was "in fact illegal and void." On the contrary, the authorities which we have cited in our brief (page 9 et seq.) are to the effect that a marriage de facto is "presumed to be legal and valid" and the "duty of proving the contrary rests on the party who attacks it." (Quotation is from *Ex parte Morgan*, 106 Cal. App. 602, 289, P. 647 (1932).) Claimant, therefore, was not required, in addition to showing the de facto marriage, to prove that said marriage was performed according to the laws of Mexico, as libelants contend. (We, of course, do not admit that there was any evidence that the marriage between the deceased and claimant in Mexico was not in accordance with Mexican law.)

### Conclusion

It is difficult to distinguish the facts in the instant case from those in the case of *In re Chandler's Estate*, 113 Cal. App. 630, 299, P. 110 (1931), where the marriage also took place in Mexico and the par-

ties lived together as husband and wife thereafter for 20 years. The court said that in these circumstances the presumption which the law gives will not be easily overcome.

According to the weight of authority, particularly the California decisions, the deputy commissioner correctly found from the evidence that claimant was the surviving wife of the deceased; the compensation order is in accordance with law and the libel should be dismissed. *Cardillo, deputy commissioner, v. Liberty Mutual Insurance Co.*, 330 U. S. 469 (1947).

JAMES M. CARTER,

United States Attorney.

/s/ CLYDE C. DOWNING,

Assistant United States Attorney, Attorneys for  
Respondent Pillsbury.

Of Counsel:

WARD E. BOOTE,

Chief Counsel,

U. S. Employees' Compensation  
Commission.

HERBERT P. MILLER,

Assistant Chief Counsel.

[Endorsed]: Filed Nov. 10, 1947. [222]



[Title of District Court and Cause.]

RULING ON MOTION FOR A TRIAL DE  
NOVO, AND MOTION TO SET CASE FOR  
TRIAL

Upon consideration of libelants' motion for a trial de novo, and a correlated motion by libelants to set case for trial in this court, and upon consideration of the memoranda of respective proctors, each motion of libelants is denied. Exceptions allowed libelants.

It now appearing from the records and files before this court that the compensation order and award of respondent Deputy Commissioner, dated February 18, 1946, is factually and legally supported and is in all respects in accordance with law, the petition of libelants for injunction is denied in toto, and the libel herein is dismissed with costs.

Cardillo v. Liberty Mutual Co.,

330 U. S. 470;

South Chicago Co. v. Bassett,

309 U. S. 251, at pages 257, 258;

Wm. Spencer, etc., v. Lowe, Deputy

Commissioner, etc., 152 F. 2d 847;

Title 33, Section 921, U.S.C.A.;

Estate of Chandler,

113 Cal. App. 630;

In re Morgan,

106 Cal. App. 602.

Dated January 6, 1948.

/s/ PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Filed Jan. 7, 1948. [223]

[Title of District Court and Cause.]

PETITION FOR APPEAL

To the Honorable Paul J. McCormick, Judge of  
the United States District Court, Southern Dis-  
trict of California, Southern Division:

Libelants respectfully pray that they and each of  
them may be permitted to take an appeal from the  
final decree entered in the above Court on January  
7, 1948, to the United States Circuit Court of Ap-  
peals, for the Ninth Circuit, for the reasons speci-  
fied in the Assignments of Error which are filed  
herewith.

Dated: March 17th, 1948.

/s/ LASHER B. GALLAGHER,

Proctor for Libelants.

[Endorsed]: Filed March 18, 1948. [224]

[Title of District Court and Cause.]

### ASSIGNMENTS OF ERROR

Now comes the Libelants and hereby assign the following errors in the above-entitled proceedings:

#### I.

The District Court erred in denying libelants' motion for a trial de novo of the question whether "Cora Olcott" is the surviving wife of Walter Olcott.

#### II.

The District Court erred in denying libelant's motion to set the case for trial before said District Court.

#### III.

The District Court erred in ruling that "the compensation order dated February 16, 1946, is factually and legally supported and is in all respects in accordance with law." [225]

#### IV.

The District Court erred in denying "the petition (sic) of libelants for injunction in toto."

#### V.

The District Court erred in dismissing the libel.

#### VI.

The District Court erred in refusing to enjoin the enforcement of the compensation order.

#### VII.

The judgment of the district court and each of its rulings as set forth in the "Ruling on Motion for a trial de novo, and motion to set case for trial"



signed and dated January 6, 1948, are and each thereof is in contravention of the Fifth Amendment to the Constitution of the United States in that such rulings and each thereof deprive libelants of their property without due process of law.

### VIII.

The compensation order and the acts and omissions of the deputy commissioner are and each thereof is arbitrary and capricious, not in accordance with law, and deprive the libelants of their property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

### IX.

The compensation order is not supported by substantial evidence.

### X.

The District Court erred in refusing to rule that the compensation order was not in accordance with law because the deputy commissioner refused to compel the applicant to sustain the burden of proving a legal marriage according to the law of Mexico and upon the several and distinct ground that the deputy commissioner refused to consider "the question of whether a purported [226] marriage may or may not have been valid or may not have been invalid and in compliance with all formalities."

Dated: March 17th, 1948.

/s/ LASHER B. GALLAGHER,  
Proctor for Libelants.

[Endorsed]: Filed March 18, 1948. [227]

[Title of District Court and Cause.]

### ORDER ALLOWING APPEAL

The petition of libelants for an appeal from the final decree entered in the above-entitled cause on January 7, 1948, is hereby granted and the appeal is allowed.

It Is Further Ordered, that a certified transcript of the record herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Los Angeles, California, this 18th day of March, 1948.

PAUL J. McCORMICK,  
United States District Judge.

[Endorsed]: Filed March 18, 1948. [228]

[Title of District Court and Cause.]

NOTICE OF APPEAL

The libelants hereby appeal and each of them appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of this Court entered herein on January 7, 1948, and from each and every part thereof.

Dated: March 17th, 1948.

/s/ LASHER B. GALLAGHER,  
Proctor for Libelants.

To: Edmund L. Smith, Clerk, United States District Court; James M. Carter, United States Attorney; Clyde C. Downing, Assistant United States Attorney, 600 Federal Bldg., Los Angeles 12, Calif., Proctors for Respondent.

[Endorsed]: Filed and Mailed Copy to Clyde C. Downing, Attorney for Respondent, March 18, 1948.



[Title of District Court and Cause.]

### BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

Whereas, Libelants, Freeman Steamship Company and Fireman's Fund Insurance Company have or are about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain final decree heretofore made and entered in the above-entitled cause on January 7, 1948; and

Whereas, Fireman's Fund Indemnity Company, a corporation, organized and existing under and by virtue of the laws of the State of California and qualified to act as a surety in this Court, is held and firmly bound unto the Respondent herein and unto whom it may concern in the sum of Two Hundred Fifty Dollars (\$250.00), for the payment of which well and truly to be made it does hereby bind itself, its successors and assigns firmly by these presents and agrees that in case of default or contumacy on the part of the said [230] Appellants Freeman Steamship Company or Fireman's Fund Insurance Company, execution may issue against it, its goods, chattels and lands;

Now, Therefore, the condition of this obligation is such that if the above-named Appellants, Freeman Steamship Company and Fireman's Fund Insurance Company, shall prosecute said appeal with effect, and pay all costs which may be awarded against them as such Appellants if the appeal is not

sustained, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Dated: Los Angeles, California, March 17th, 1948.

FIREMAN'S FUND  
INDEMNITY COMPANY,

[Seal]      /s/ A. I. STODDARD,  
Attorney-in-Fact.

Examined and recommended for approval as provided in Rule 13.

/s/ LASHER B. GALLAGHER,  
Proctor for Appellants.

I hereby approve the foregoing bond this 18th day of March, 1948.

/s/ PAUL J. McCORMICK,  
United States District Judge.

The premium charged for this bond is \$10.00 per annum. [231]

State of California,  
County of Los Angeles—ss.

On this 17th day of March, 1948, before me, M. E. Beeth, a Notary Public in and for said County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared A. I. Stoddard, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Fireman's Fund Indemnity Company and acknowledged to me that he subscribed the name of Fireman's Fund Indemnity Company thereto as principal, and his own as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the said County of Los Angeles the day and year in this certificate first above written.

[Seal]        /s/ M. E. BEETH,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires March 24, 1949.

[Endorsed]:    Filed March 18, 1948.



[Title of District Court and Cause.]

NOTICE OF FILING BOND FOR COSTS  
ON APPEAL

To the Respondent above named and to his Proctors, James M. Carter, United States Attorney, and Clyde C. Downing, Assistant United States Attorney:

You and Each of You Will Please Take Notice that the bond for costs on appeal herein was approved by the Honorable Paul J. McCormick, and was filed in the office of the Clerk of the above entitled Court, on March 18th, 1948, and said bond was executed and given by the Fireman's Fund Indemnity Company, a corporation authorized to execute surety bonds pursuant to the laws of the State of California, said bond being in the sum of Two Hundred Fifty Dollars (\$250.00), and is by reference thereto made a part of this Notice.

Dated: March 22, 1948.

/s/ LASHER B. GALLAGHER,  
Proctor for Libelants.

[Affidavit of service by mail attached.]

[Endorsed]: Filed March 22, 1948. [232]

[Title of District Court and Cause.]

PRAECIPE FOR APOSTLES ON APPEAL

To the Clerk of the above entitled Court:

I hereby request that the record on appeal in the above entitled cause include the following:

1. Libel.
2. Answer of Respondent.
3. Motion for Summary Judgment.
4. Libelants' Memorandum of Points and Authorities in Opposition to Motion for Summary Judgment.
5. Notice of Motion and Motion for a Trial de Novo on a jurisdictional and basic fact and Motion to Set Case for Trial.
6. Respondent's Memorandum in Opposition to Motion for trial de novo.
7. Libelants' Opening Brief on submission of case. [234]
8. Respondent's Answering Brief on submission of case.
9. All Minute Orders entered by the above entitled Court in the above entitled action.
10. Ruling on Motion for a Trial de Novo, and Motion to Set Case for Trial, dated January 6, 1948.
11. Final Decree.
12. Petition for Appeal.
13. Assignments of Error.
14. Order Allowing Appeal.
15. Bond for Costs on Appeal.
16. Notice of Appeal and Affidavit of Service on Respondent.

17. Citation and acknowledgement of service of Citation, copies of Petition for Appeal, Order Allowing Appeal and Assignments of Error.

18. Notice of Filing Bond for Costs on Appeal and Affidavit of Service by Mail.

19. All oral proceedings.

20. All exhibits.

21. Entire record of proceedings before Respondent Deputy Commissioner leading up to the making of the compensation order involved herein as returned by said Deputy Commissioner and on file in the office of the Clerk of the above entitled Court.

22. Transcripts of all oral proceedings before said Deputy Commissioner.

23. Transcript of all oral proceedings, arguments and motions presented to the above entitled Court.

24. Praecipe and Affidavit of Service by Mail.

25. Any and all documents which are a part of the records of the above entitled Court in the above entitled matter and not hereinbefore specifically requested. [235]

Dated March 22nd, 1948.

/s/ LASHER B. GALLAGHER,  
Proctor for Libelants.

[Affidavit of service by mail attached.]

[Endorsed]: Filed March 22, 1948. [236]



[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 237, inclusive, contain the original Citation and full, true and correct copies of Libel for Injunction Pursuant to Title 33 U.S.C.A., Sec. 921; Answer of Respondent Deputy Commissioner Warren H. Pillsbury; Certified Copy of Record of Proceedings Before Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission; Motion for Summary Judgment; Memorandum in Support of Motion for Summary Judgment; Memorandum of Points and Authorities in Opposition to Motion for Summary Judgment; Minute Order Entered October 14, 1946; Judgment of Dismissal of Summary Judgment; Notice of Motion and Motion for a Trial de Novo on a Jurisdictional and Basic Fact and Motion to Set Case for Trial; Memorandum in Opposition to Motion for Trial de Novo; Minute Order Entered July 30, 1947; Libelant's Opening Brief; Respondent's Answering Brief; Ruling on Motion for a Trial de Novo, and Motion to Set Case for Trial; Petition for Appeal; Assignments of Error; Order Allowing Appeal; Notice of Appeal; Bond for Costs on Appeal; Notice of Filing Bond for Costs on Appeal and Praecipe for Apostles on Appeal which, together with copy of reporter's transcript

of proceedings on July 30, 1947, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing Apostles on Appeal amount to \$57.90 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 19th day of April, A.D. 1948.

[Seal]

EDMUND L. SMITH,  
Clerk.

By /s/ THEODORE HOCKE,  
Chief Deputy Clerk.

In the District Court of the United States in and  
for the Southern District of California, South-  
ern Division

No. 706-SD Civil

FREEMAN STEAMSHIP COMPANY, a corpora-  
tion, and FIREMAN'S FUND INSURANCE  
COMPANY, a corporation,

Libelants,

vs.

WARREN H. PILLSBURY, Deputy Commis-  
sioner, 13th Compensation District,

Respondent.

Honorable Paul J. McCormick, Judge Presiding

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Los Angeles, California

Wednesday, July 30, 1947

Appearances:

For the Libelants: Lasher B. Gallagher, Esquire.

For the Respondent: James M. Carter, United  
States Attorney; by Clyde C. Downing, Assistant  
United States Attorney. [1\*]

(Case called by the clerk.)

Mr. Gallagher: I know that your Honor has  
read the memorandum which was filed in support of  
the motion, and also the memorandum in opposition  
to the motion for a trial de novo. I want to make a

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\* Page numbering appearing at top of page of Reporter's certified  
Transcript of Record.



brief comment upon the reply memorandum and then state my point concisely and sit down.

In the case of *Crowell v. Benson*, 285 U. S. 22, as read by Government counsel, the Supreme Court is supposed to have said that there are only two jurisdictional questions which could exist in any case under the Longshoremen's and Harbor Workers' Compensation Act. I call your Honor's attention to the proposition that there is nothing in the case which says that.

The principal point involved here, I think, is the fact that the relationship of the delinquent employer in all of these cases is a jurisdictional question; and in that respect I want to call your Honor's attention to the section of the law which has to do with compensation for death. That is Title 33, Section 909.

“If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:”

I will skip (a) because that has nothing to do with it. [2]

“(b) If there be a surviving wife or dependent husband and no child of the deceased, to such wife or dependent husband 35 per centum of the average wages of the deceased, during widowhood, or dependent widowhood, with two years' compensation in one sum upon remarriage; \* \* \*”

It is my contention that before the Compensation Commissioner can proceed to determine any ques-

tion of fact with reference to whether there shall be a death benefit, those facts consisting of dependency and the amounts actually contributed by the deceased—there must be two basic facts determined and proved:

No. 1. The death must have occurred as the result of an injury sustained on navigable waters of the United States, or the death must have been sustained upon navigable waters of the United States.

No. 2. The person who is making the application must be the widow or the widower. And those two facts are jurisdictional and basic facts.

If they are jurisdictional and basic facts, then there must be a trial de novo whenever a proceeding by way of injunction is instituted in the United States District Court, for the purpose of reviewing the award of the Commissioner. And that, if your Honor please, is the point.

We relied on the Crowell case because that case said [3] that, as to basic facts, we are entitled to a trial de novo. That is a simple question and it is an important question. I submit it so far as the libellant is concerned.

The Court: Before we hear from you, Mr. Downing, I want to call counsel's attention to the most recent pronouncement of the Circuit Court of Appeals for the Ninth Circuit in the case of Portland Stevedoring Co., appellant, v. Wegener, Deputy Commissioner, etc.

Mr. Gallagher: Wedemeyer, your Honor?

The Court: Wegener. Wegener was the employee and Whipple was the Deputy Commissioner of the 14th Compensation District, decided July 24, 1947.

This was a proceeding where a longshoreman had been injured in service and had obtained the benefits of the remedial legislation in such cases. After payments had been made for a considerable period it was claimed that he had recovered and that, therefore, he was not entitled to further disability awards; and the matter was presented to the Commissioner on that issue. The Commissioner ruled favorably to the disallowance of any further award. An application was made to the court to set aside that decision. Those are briefly the facts of the case.

“Wegener instituted an action to set aside this compensation order”——

I am reading—— [4]

“of July 2, 1945, and the lower court ordered it set aside apparently upon the ground that there was no evidence to support the finding of the Deputy Commissioner to the effect that the disability resulting from the back injury had terminated. The employer appeals from that decree.

“There can be no doubt that in a case disclosing the facts here involved, the Longshoremen’s and Harbor Workers’ Compensation Act \* \* \* contemplates that as to all questions of fact the findings of the Deputy Commissioner, supported by evidence and within the scope of his (here unquestioned) authority shall be final.



See *Crowell v. Benson*, 285 U. S. 22 \* \* \* ; *South Chicago Coal, etc., Co. v. Bassett*, 309 U. S. 251 \* \* \* This rule as to the finality of findings of fact applies where there is any evidence warranting inferences supporting them. *Simmons v. Marshall*, 9 Cir., 94 F. 2d 850, 851.

“It is clear that the District Judge put a different construction on the evidence than did the Deputy Commissioner, which caused him to reach a different conclusion as to the facts. He apparently was of the opinion that there was no evidence that the disability related to the back injury had terminated. But the record does not support this [5] view of the evidence. There was some evidence to the contrary, and under the numerous authorities, the Deputy Commissioner was free to adopt the view of the facts expressed in his finding on this point.

“The evidence revealed an arthritic spine condition (existing prior to the back injury for which compensation was allowed) and this arthritic condition was present in substantially the same degree a short time before the hearing resulting in the challenged order of the Deputy Commissioner. In his brief, the Deputy Commissioner points out that the District Judge arrived at his conclusion by reasoning that Wegener’s back condition subsequent to the injury was due to both arthritis and the injury; that said condition had not cleared up at the time of the amputation of the left leg (due to

other causes); that the back condition (due to arthritis and the injury) prevents Wegener from wearing an artificial limb; that therefore the injury continues to cause disability.

“If it be in harmony with the most valid and accepted principles of compensation law to assume that where one condition (related to the injury) combines with another condition (unrelated to the injury) so as to cause disability, the injured [6] employee is entitled to compensation for the resulting disability, then the injury need not be the sole effective cause of the disability. But, as pointed out in the brief of the Deputy Commissioner, the difficulty here is that the condition related to injury (as distinguished from the arthritis) continued after the amputation of the left leg and existed at the time of the hearing. Even though there may have been a conflict in the evidence on this point, or a conflict between evidence and inference, the finding of fact of the Deputy Commissioner, if supported by evidence, is final and conclusive. The record discloses that there was evidence to support his finding and it is not the province of the courts to weigh this evidence. This rule is now too well established to require citation of an impressive list of authorities.

“The District Judge clearly was moved by the most humane and understandable impulses in arriving at his conclusion, but in the absence of any error in law, he was not authorized to try the cause *de novo* and to weigh the evidence.

This now established construction of the law preserves the clear intent of Congress that the law should be viewed liberally [7] for the protection of workers, and experience appears to have fully satisfied Congress that the existing method of establishing facts provides the fairest approximation of justice.

“The decree of the lower court is reversed.”

That is the latest expression of our Court on this construction of *Crowell v. Benson*.

Mr. Gallagher: If your Honor believes that that decision is in point with reference to the proposition involved here, then I see no hope for the libellant in this court. But that decision is no different than a hundred others.

If your Honor wants me to, I can cite to your Honor at least a hundred cases exactly like that, both before and after the *Crowell* case; and the *Crowell* case itself is exactly like that in one respect, where the court says:

“Apart from cases involving constitutional rights to be appropriately enforced by proceedings in court, there can be no doubt that the Act contemplates that, as to questions of fact arising with respect to injuries to employees within the purview of the Act, the findings of the Deputy Commissioner, supported by evidence and within the scope of his authority, shall be final. \* \* \*”

The Supreme Court said that many years ago. We are not [8] talking here about a case where there



has been a finding about whether this man died or a finding about whether this man had a certain injury. We are discussing here the question whether this woman is the widow of this man or was married to this man, and unless she was a surviving wife the Deputy Commissioner would have no jurisdiction to pass on any question of fact in the case. The Commissioner would have no jurisdiction to determine whether this woman was or was not dependent on this man if she were not the widow.

Whether she was or was not the widow was a basic and jurisdictional fact. This case here that your Honor read does not mention anything about jurisdiction, and it certainly could not overrule the Supreme Court. The Supreme Court holds that, as to jurisdictional and basic questions, we are entitled to a trial de novo. That decision there has nothing to do with jurisdictional questions, because everybody admitted that a man was injured on navigable waters, everybody admitted that he was an employee. The only question was whether the Commissioner had a right to terminate the compensation on the ground that the man's injury had ceased to cause any disability.

The Court: Of course, the court said in the concluding paragraph, which is really the principle that the court announced, after discussing the concrete situation:

“The District Judge clearly was moved by the [9] most humane and understandable impulses in arriving at his conclusion, but in the absence of any error in law, he was not author-

ized to try the cause *de novo* and to weigh the evidence. This now established construction of the law preserved the clear intent of Congress that the law should be viewed liberally for the protection of workers, and experience appears to have fully satisfied Congress that the existing method of establishing facts provides the fairest approximation of justice.”

Now, isn't it true that the status of this woman is a factual question primarily, the fact as to whether there was a marriage?

Mr. Gallagher: In the same sense that whether a man is or is not an employee is a factual question, but it is a jurisdictional factual question.

The Court: Yes; it is a jurisdictional factual question in the sense that there must be evidence that establishes the relationship between the worker and his widow or his claimed widow.

There is evidence here, and it is set up in the petition, which justifies an inference. The woman says that they went to Tia Juana and that they went through some kind of a marriage ceremony there. She does not know where it was; she is not able to identify any persons. She states that certain [10] persons were present at the time of the marriage. There was cohabitation as the result of that.

And now, from those facts and under this authority, isn't it the province of the Commissioner to draw the inference?

Mr. Gallagher: I do not think so. It may be his province, in the first instance, to pass on the jurisdictional fact; but the fact that he has a right to



determine that in the first instance does not remove it from the power of this court to try that issue *de novo*.

And, so far as the established principles are concerned, I respectfully contend that the Circuit Court of Appeals, that one Circuit Court of Appeals was not even passing on this question. And, as I understand decisions of any court, you must take what they say in the light of the facts which are involved and in the light of questions which are decided, and if they go outside of justiciable questions—questions which are actually presented to the court as disputed questions of law—and make some statement about something else that is unnecessary to the decision, that is just *obiter* and is of no effect; it is not precedent and it is not authority for anything.

The Circuit Court of Appeals cannot overrule the Supreme Court when the Supreme Court says that you are entitled to a trial *de novo* on jurisdictional facts. And where they say, [11] aside from errors of law, the decision is final, if they mean to change the rule announced by the Supreme Court in the *Crowell* case, I do not see how they can do it.

And, so far as the merits of this case are concerned, your Honor, we have not argued those yet, have not briefed them. I do not think there is enough evidence in here, even if there was not the jurisdictional fact, to justify the Commissioner in finding that this woman was the widow of this man. There is no such thing as a common law marriage in California, and he relied on that. In other words, the fact that a man and woman live together in California means nothing.



Now, in view of a code section which was adopted in 1857, I think—anyhow, a long time ago, and which code section has been overlooked in at least 50 or 60 cases by the District Court of Appeals of California, but the Supreme Court of this state has stated very definitely that there is no presumption of marriage from the mere fact that people live together, in California. There is no common law marriage; so the fact that she lived with this man does not prove that she was married to him.

And we can, if we have to, and when the time comes, we will furnish the court with authorities on the proposition that in order to prove a marriage in a foreign place you have got to prove the foreign law and then prove that you complied with it. There are plenty of cases on that. [12]

The Court: Supposing these people had had a child during their cohabitation.

Mr. Gallagher: It would have been illegitimate.

The Court: Well, would the child have been able to reap the benefits of the Act?

Mr. Gallagher: I do not know. Maybe illegitimate children are allowed to reap the benefits of the Act. They are under some compensation acts. That is purely a matter of statute. If it just says "child" and does not say "illegitimate child," then any kind of a child could reap the benefits of the Act.

The Court: It seems to me this is a pretty broad statement, Mr. Gallagher, of the Court of Appeals.

"This now established construction of the law preserved the clear intent of Congress that the law should be viewed liberally for the protection of workers,"

Now, if there be a relationship between a man and a woman, and there is evidence, as there is—I am speaking of your petition. You say we have not reached the point of the merits; that is true. And in your petition you set up what was supposed to be the only evidence that was before the Commissioner, and that is the evidence that I am speaking of. The woman there testified that they went through this marriage ceremony; and, while it is subject to [13] infirmities and reasonable inferences would be justified either way, the Court of Appeals says that the purpose of this law is to assure workers the benefit of this protective instrumentality.

Here is a woman who, clearly, there would not be any room, I think, for any finding but what there was cohabitation. There was admitted consummation. Whether it is sufficient to consummate a marriage or not is not the question; but there was cohabitation between the two of them. They were living together as husband and wife and had been for a considerable period.

Mr. Gallagher: Well, that is not a novel situation in California.

The Court: I am not speaking about that. But this is the point that I am trying to reason: If the purpose of the Statute is to assure workers the benefit of those remedial elements of the law, here is a woman who, as far as the record shows, other than the conclusive proof of the marriage ceremony, was to all intents and purposes this man's wife. There is no evidence that there was infidelity; there is no evidence that she was promiscuous with other



men. There is evidence that they lived together in that relationship and continued to live in that relationship up to the time of his death.

Now, is it the spirit of the law that the court should [14] interpose itself as against the findings of the Commissioner, when the Court of Appeals of this Circuit has said that in the absence of any error in law—not in fact but in law—any error in law, the District Judge was not authorized to try the case *de novo* and to hear the evidence; that the established construction of the law now preserves the clear intent of Congress that the law should be viewed liberally for the protection of workers.

If the court should go into the question as to the validity of the marriage, as to whether or not it was licensed, whether authentic and recorded, as provided in the laws of California, aren't we deviating from the very thing that the Court of Appeals says is the province of the Commissioner?

Mr. Gallagher: Well, I do not think so. And furthermore, I think that the Fifth Amendment to the Constitution of the United States guarantees even an employer the equal protection of the law; and that the law cannot be modified or amended under the term "liberality of construction."

Now, there isn't anything that requires any liberality of construction unless the Statute is ambiguous. If a statute says on its face that the widow, and only the widow, of an employee is entitled to compensation—and that is what the Statute does say—then there is nothing to be construed about it. The woman must be the widow.



The Court: Does it say "widow" or "surviving wife?" [15]

Mr. Gallagher: "Surviving wife." It says the widow is a surviving wife. And in this case we are not dealing with an employer, we are not dealing with an employee, we are dealing with a woman who claims she was married to this man.

I do not see any reason why a court should bend itself over backward to force a corporation to support a woman who was not actually married to an employee. That does not seem to me to be proper.

The Court: Get 33 U.S.C.A.

Mr. Gallagher: I have it here. Your Honor, may I have a telephone message sent over to the Superior Court? I have a jury case waiting there and I was supposed to be there at 11:00 o'clock.

The Court: I am sorry. Mr. Downing, what have you got to say about the matter?

Mr. Gallagher: Does your Honor want to have those definitions?

The Court: I was just going to look them up here.

Mr. Gallagher: I might make it easier by getting the definitions.

"The term 'widow' includes only the decedent's wife living with or dependent for support upon him at the time of his death; \* \* \*"

That is Section 902 subdivision (16). [16]

Mr. Downing: If the court please, we believe the case that your Honor has just read is very applicable and applies to the case at bar.

We sincerely believe that the libelant is confusing constitutional jurisdictional issues with statutory jurisdictional issues. I have read the case of *Crowell v. Benson* and it occurs to me that the fact the jurisdictional issues having occurred upon navigable waters, the relationship of master and servant very definitely are jurisdictional issues and must be established. But in this case before the Commissioner it certainly was a factual issue as to whether or not this woman is the surviving wife of the decedent; and we believe that, while Mr. Lasher Gallagher says that he has no standing before the court, he still can maintain that the award is not supported by substantial evidence, and the court, of course, can examine the proceedings before the Commissioner and determine whether or not substantial evidence has been introduced.

So I still believe that if there is substantial evidence, that this is a factual issue and the finding of the Commissioner is final and conclusive, and this court is without jurisdiction to disturb it.

I do not believe that this particular issue is an error in law or a jurisdictional issue that would entitle them to a *de novo* trial. [17]

I have not particularly briefed that particular point where the court is now looking at U.S.C.A., but I do not believe that that, again, is a jurisdictional issue, because we have a good many cases we cited in our memorandum to this effect:

“In such a category is the issue whether the jury arose in the course of employment, whether it is self-inflicted, whether it resulted in dis-

ability, whether (in death cases) the compensation claimant is within the status of those entitled to compensation upon the death of an employee from injury. In none of these circumstances could the Deputy Commissioner award compensation unless the facts exist which bring the case within the Statute; yet as stated by the Supreme Court, there is no right to a trial de novo as to these issues because they are not fundamental or basic, but only statutory jurisdictional issues. As stated in *Wm. Spencer & Son Corp. v. Lowe*, Deputy Commissioner, 152 F. (2d) 847 \* \* \* 'a trial de novo as to statutory jurisdictional issues is not permissible.' "

We maintain that the issue as to whether Cora E. Olcott is the widow of the deceased employee within the meaning of the Longshoremen's Act is a statutory jurisdictional one and libelants are not entitled to a trial de novo. [18]

The Court: I noticed in the definition of "child" that the relationship of loco parentis is involved there; so that would cover a child born out of wedlock, I suppose, if there was a recognition there that appears.

I am inclined to think that under this decision of the Court of Appeals we have no right to review the finding of the Commissioner. While it is a basic feature in the case, under *Crowell v. Benson* this use of this word "jurisdictional" is, as it is in many instances, a very difficult and complicated question.



Whether it could be called jurisdictional or not, it is a factual question, and the legal conclusion is to be drawn from the facts.

Now, what are the facts set up in the proceeding as it is now projected before the court?

Well, they are substantially as I related: That the woman who claims to be the widow appeared before the Commissioner and testified, and, except as to inferences, there was no dispute on it. She testified that she and Walter Olcott, the seaman, deceased, went to Tia Juana and went before some clergyman and went through some marriage ceremony; that there were some papers executed at that time; that she has lost the papers, could not find them; that there was some person present as a witness but she did not know who he was; he was apparently a stranger to her but that he had witnessed this ceremony; that they had each considered the [19] matter as a marriage by cohabiting.

Then there was testimony of a Mexican lawyer.

Mr. Gallagher: Well, that Mexican lawyer testified to a conflict, your Honor, that if this woman did everything she said she did, she was not married in Mexico; that it was impossible for a clergyman to marry anybody in Mexico at that time. And there is no conflict on that. You would have to have a civil ceremony.

The Court: Did not the Mexican lawyer corroborate her on the fact that she sought to find a record of it.

Mr. Gallagher: She came to him and asked him if he could get her a copy of the certificate; but that,

of course, would not prove that she was married according to the laws of Mexico, if her testimony shows she claimed she was only married by a priest or a preacher.

The Court: She said she was not married by a priest. She said definitely——

Mr. Gallagher: By a preacher.

The Court: That is what she said. It would not establish the fact, of course. I am speaking about inferences under this decision of the Court of Appeals. Wouldn't it have a tendency to buttress the belief that the Commissioner apparently had, that she was telling the truth about the marriage?

Mr. Gallagher: Let us assume that she was telling the [20] truth; that she went to a preacher or somebody she thought was a preacher and went through what she thought was a ceremony of marriage; what of it?

If under a Mexican law the preacher could not have married her, her good faith has nothing to do with it, and the fact that some preacher attempted to marry her would not make her married.

Suppose we had a case involving an alleged marriage in California and some woman claimed that she went before the Mayor of the City of Los Angeles and was married by him. Well, the Mayor of the City of Los Angeles is not a person who can perform a marriage. The mere fact that she went to the City Hall and tried to get a copy of the certificate, thinking that she was entitled to one, or went to a lawyer to get her one, or even brought suit in court to establish the marriage would not be evi-

dence of an actual marriage if the person who is said to have performed it had no authority whatever to do so.

The Court: I do not know as it is necessarily the legal status that the law is designed to effect, because I remember of reading a case where, for instance, a woman had been married to a seaman and subsequently she had gone through a bigamous marriage with another man, left this lawful husband, purported to contract a marriage with a second husband. The seaman died or was injured and died, and she claimed the benefits of the Act. The court held that she was not entitled to it. Now, she was the lawful wife of that man.

Mr. Gallagher: But she was not dependent on him for support at the time of the death, and that is the reason the court would not stand for the award. I remember that case.

The Court: Of course, that is a disjunctive feature in the Act. But if the status of the individuals, as in *Crowell v. Benson*, where the question was the status, or whether the worker was an employee of the employer, if the status is the criterion where there is a claimed widow, that is the sole criterion, then it is applicable in the case that I mentioned, because she certainly was his wife at the time of his death.

Mr. Gallagher: You see, your Honor has overlooked the fact that there are two requisites. You have got to be the wife and you have got to be dependent. If you are not the wife, it does not make any difference whether you are dependent.



The Court: Are they conjunctive or disjunctive?

Mr. Gallagher: I think so.

The Court: Well, let us see if they are.

Mr. Gallagher: No; they are not. There is nothing about dependency of the wife. It is parents or children.

The Court: “ ‘child shall include a posthumous child, [22] a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury, and a step-child or acknowledged illegitimate child dependent upon the deceased, \* \* \*.’ ”

Mr. Gallagher: Isn't there something in there about “during dependent widowhood?”

The Court: Well, now, let us see.

“The term ‘widow’ includes only the decedent's wife living with or dependent for support upon him at the time of his death; \* \* \*”

Mr. Gallagher: That is “living with or dependent upon.” This other woman would not be “living with him” if she had contracted a bigamous marriage with somebody else.

The Court: No; and she would not be “dependent on him.”

Mr. Gallagher: And she would not be “dependent on him” if she was living with this newly acquired quasi-spouse.

The Court: This woman, according to the record here, was both living with him and was dependent on him for support.

Mr. Gallagher: Yes. We do not claim that she was not living with him and we do not claim that she was not dependent on him or, in any event, we do not claim that he was not supporting her.

The Court: I am going to hold that under this decisions of Portland Stevedoring Co., appellant, v. Wegener, and [23] Whipple, Deputy Commissioner, decided by the Circuit Court of Appeals of the Ninth Circuit on July 24, 1947, the court has no right, under the record as it exists at this time, to try the issues de novo.

Mr. Gallagher: Now, this is an admiralty matter and, although there have been many statements made pro and con, I think it is necessary for the libelant to take an exception to the ruling, and we do.

The Court: I think it is.

Mr. Downing: If the court please, I think at this time we would like to ask permission to have 30 days within which to answer or otherwise plead to the petition.

The Court: Any objection, Mr. Gallagher?

Mr. Gallagher: You have already pleaded to it.

The Court: Filed a motion.

Mr. Downing: Filed a motion to dismiss and that was denied.

Mr. Gallagher: I thought you filed an answer.

The Court: I do not believe so.

Mr. Downing: No; I do not think we did. It is my recollection we did not.

The Court: A motion for summary judgment.

Mr. Downing: For summary judgment.

Mr. Gallagher: It was before that, I thought, that they filed an answer. [24]

Mr. Downing: No; I do not think so.

Mr. Gallagher: I have no objection if counsel really needs it, but if counsel for the respondent does not need it, I would appreciate getting this case decided as soon as possible.

The Court: Yes; there is an answer filed.

Mr. Downing: There is an answer?

The Court: There is an answer.

Mr. Gallagher: So that we can get on our way to the Circuit Court of Appeals, because we are paying this woman.

Mr. Downing: Could we have the court take it under submission and give us so many days in which to file briefs?

Mr. Gallagher: Yes. I would suggest that your Honor take the matter under submission now on the merits, and I will get a brief in within 10 days and respondent may have 15, and then the matter may stand submitted.

Mr. Downing: Satisfactory.

The Court: So ordered, Mr. Horn. [25]



## Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 8th day of March, A.D. 1948.

/s/ ALBERT H. BARGION,  
Official Reporter.

[Endorsed]: No. 11902. United States Circuit Court of Appeals for the Ninth Circuit. Freeman Steamship Company and Fireman's Fund Insurance Company, Appellants, vs. Warren H. Pillsbury, Deputy Commissioner, U. S. Employees' Compensation Commission, Appellee. Apostles on Appeal. Upon Appeal from the District Court of the United States for the Southern District of California, Southern Division.

Filed April 20, 1948.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11902

FREEMAN STEAMSHIP COMPANY and  
FIREMAN'S FUND INSURANCE COM-  
PANY,

Appellants,

vs.

WARREN H. PILLSBURY, Deputy Commis-  
sioner, U. S. Employees' Compensation Com-  
mission,

Appellee.

STATEMENT OF POINTS ON WHICH AP-  
PELLANTS INTEND TO RELY ON AP-  
PEAL AND DESIGNATION OF PARTS  
OF RECORD NECESSARY FOR THE CON-  
SIDERATION THEREOF

Appellants adopt as their points on appeal the  
Assignments of Error appearing in the transcript  
of the record in this case.

Appellants request that the record as certified to  
the Clerk of the United States Circuit Court of  
Appeals, for the Ninth Circuit, be printed in its  
entirety.

Dated April 27th, 1948.

/s/ LASHER B. GALLAGHER,

Proctor for Appellants.

[Affidavit of service by mail attached.]

[Endorsed]: Filed April 28, 1948.









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No. 11902.

IN THE

United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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FREEMAN STEAMSHIP COMPANY and FIREMAN'S FUND  
INSURANCE COMPANY,

*Appellants,*

*vs.*

WARREN H. PILLSBURY, Deputy Commissioner, U. S.  
Employees' Compensation Commission,

*Appellee.*

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APPELLANTS' OPENING BRIEF.

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**Jurisdiction.**

One Walter Olcott, while working as a longshoreman in the employ of the Freeman Steamship Company, sustained injuries while working in said capacity upon navigable waters of the United States in San Diego County, California, on November 6, 1944, and as a result of the injuries, died on November 12, 1944. A woman giving her name as Mrs. Cora E. Olcott and claiming to be the surviving wife of Walter Olcott filed a claim for compensation arising out of the death of Walter Olcott with the United States Employees' Compensation Commission, in the office of Deputy Commissioner Warren H. Pillsbury, District 13, on February 15, 1945. [Ap. 58.] After hearings and investigation conducted by the

deputy commissioner, a compensation order awarding a death benefit was made and entered in the office of the said deputy commissioner on the 18th day of February, 1946. [Ap. 174-175.]

On March 5, 1946, appellants (libelants in the court below) filed a Libel for an Injunction in the United States District Court, Southern District of California, Southern Division, contending that the award was not in accordance with law. Said Libel was filed in the court below pursuant to the Longshoremen's and Harbor Worker's Compensation Act which provides that, "If not in accordance with law, a compensation order may be suspended or set aside in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the federal district court for the judicial district in which the injury occurred . . ." (Act of Mar. 4, 1927, c. 509, sec. 21, 44 Stat. 1436, as amended June 26, 1936, c. 804, 49 Stat. 1921, 33 U. S. C. A. 921.)

On January 7, 1948, the Honorable Paul J. McCormick entered a final decree denying any relief and dismissing the libel with costs. [Ap. 224.]

Petition for Appeal was filed March 18, 1948 [Ap. 225]; Assignments of Error were filed March 18, 1948 [Ap. 225-227]; Order Allowing Appeal was filed March 18, 1948 [Ap. 228]; Notice of Appeal was filed March 18, 1948 and copy mailed to proctor for respondent on



the same date [Ap. 229]; Bond on Appeal was approved and filed March 18, 1948 [Ap. 233]; and Praecipe for Apostles on Appeal was served and filed March 22, 1948. [Ap. 234-235.]

Jurisdiction of civil causes of admiralty and maritime jurisdiction is vested in the courts of the United States by Article III, Section 2, of the Constitution of the United States, to-wit: "The judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction.

An appeal from a final decree in admiralty is authorized by Section 128a of the Judicial Code (43 Stat. at L. 936, 28 U. S. C. A. Sec. 225, which provides that a Circuit Court of Appeals shall have appellate jurisdiction to review final decisions).

### **Statement of the Case.**

In the claim for death benefit the claimant alleged that she was married to Walter Olcott on the 26th day of August, 1936, at Tijuana, Mexico by a judge of the First Instance. The basic controversy involved in this case of whether the claimant was the surviving wife of Walter Olcott. The claimant was unable to produce any documentary evidence of any marriage of any kind or character. The sum and substance of all of the evidence introduced by the claimant at the hearings before the deputy commissioner was her conclusion that she was married to Walter Olcott by a preacher in Tijuana, Mexico on August 26, 1926.

The appellants contended in the court below that (a) whether the claimant was or was not the surviving wife of Walter Olcott was a jurisdictional and basic fact which entitled appellants to a trial *de novo* with reference to said jurisdictional fact in the court below; (b) that there was no substantial evidence before the deputy commissioner sufficient to support his finding that the claimant was the surviving wife of Walter Olcott; (c) that appellants were deprived of their property by the compensation order, without due process of law as guaranteed by the 5th Amendment to the Constitution of the United States “because the deputy commissioner refused to compel the applicant to sustain the burden of proving a legal marriage according to the law of Mexico and upon the several and distinct ground that the deputy commissioner refused to consider the question whether a purported marriage may or may not have been valid or may or may not have been invalid.” [Ap. 201-207; 218-221; 226-227.]

The questions involved are raised by the Assignments of Error [Ap 226-227] and the adopting by appellants “as their points on appeal of said Assignments of Error appearing in the transcript of the record in this case.” [Ap. 261.]

### Specification of Errors Relied Upon.

Appellants rely upon Assignments of Error I, II, III, IV, V, VI, VII, VIII, IX and X. [Ap. 226-227.]

## ARGUMENT.

### POINT I.

**The District Court Erred in Denying Libelants' Motion for a Trial De Novo of the Question Whether "Cora Olcott" Is the Surviving Wife of Walter Olcott.**

The Act of March 4, 1927, c. 509, sec. 9, 44 Stat. 1429, as amended, 33 U. S. C. A. 909, provides, in so far as it is pertinent to this appeal, as follows:

"If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following: . . . (b) If there be a surviving wife . . ., to such wife . . . 35 per centum of the average wages of the deceased, during widowhood, or dependent widowhood, with two years compensation in one sum upon remarriage . . . ."

Appellants contend that in a case such as this there are at least three basic and jurisdictional facts:

- (a) The deceased must have been an employee of the person proceeded against;
- (b) The injury causing death must have been sustained on navigable waters; and
- (c) There must be a surviving wife.

The existence of an actual surviving wife is an essential jurisdictional fact in that the deputy commissioner has no authority or power to make a compensation order in favor of any woman unless she is a surviving wife. The statute providing for a death benefit is cast in contingent language. It states that if there be a surviving



wife then and only then may a compensation order be made.

In *Crowell v. Benson*, 285 U. S. 22, 56, the Court said:

“In the present instance, the Congress has imposed liability without fault only where the relation of master and servant exists in maritime employment and, while we hold that the Congress could do this, the fact of that *relation* is the *pivot* of the statute and, in the absence of any other justification, underlies the constitutionality of this enactment. If the person injured was not an employee of the person sought to be held, or the injury did not occur upon the navigable waters of the United States, there is no ground for an assertion that the person against whom the proceeding was directed could constitutionally be subjected, in the absence of fault on his part, to the liability which the statute creates.” (Emphasis added.)

In the *Crowell* case the trial court concluded that whether or not the injured man was an employee of Benson was a jurisdictional fact. The Circuit Court of Appeals affirmed the District Court and the Supreme Court affirmed the Circuit Court of Appeals.

The same principle applies in the case at bar. It was the contention of the appellee in the court below that the United States Supreme Court held in the *Crowell* case that there were only two jurisdictional facts involved in these compensation cases and that such jurisdictional facts consisted of the relationship of master and servant and the requirement that the injury be sustained upon navigable waters of the United States. The Supreme Court did not say, and never has said, that there are only two

jurisdictional facts which could be involved in any long-shoreman and harbor worker case. The important proposition involved in the *Crowell* case and which appellants contend is a vital question here is the necessity of the existence of a particular status in so far as the specific claimant is concerned. In a case involving only an injury the jurisdictional relationship is that of master and servant. In a claim for a death benefit the controlling relationship is whether the woman is actually a surviving wife and therefore the appellants were entitled to a trial *de novo* on this issue. Appellants made a specific motion for a trial *de novo* with reference to this jurisdictional fact. [Ap. 210-211.] The pertinent part of the motion is as follows:

“Come now the libelants, Freeman Steamship Company, a corporation, and Fireman’s Fund Insurance Company, a corporation, and move the Court for a trial *de novo* on the jurisdictional and basic fact whether claimant, known as Cora E. Olcott, was actually married to Walter Olcott and was and is the surviving wife of said Walter Olcott, upon the ground that the relationship, if any, of the claimant to the deceased Walter Olcott was and is a jurisdictional and basic fact.” [Ap. 210.]

The motion was denied as follows:

“Upon consideration of libelants’ motion for a trial *de novo*, and a correlated motion by libelants to set case for trial in this court, and upon consideration of the memoranda of respective proctors, each motion of libelants is denied. Exceptions allowed libelants.” [Ap. 224.]

## POINT II.

**The District Court Erred in Ruling That the Compensation Order Dated February 16, 1946, Is Factually and Legally Supported and Is in All Respects in Accordance With Law.**

A consideration of this particular point involves Assignments of Error III, IV, V, VI and IX.

The evidence with reference to whether or not the claimant was the surviving wife of Walter Olcott is as follows:

(A) Claimant's testimony before the deputy commissioner:

I was married to Walter Olcott on August 26, 1926, at Tijuana, Mexico. [Ap. 8.]

I have no marriage certificate or certified copy of a marriage certificate. I don't remember very much about where in Tijuana I was married. It was someplace like they had in Yuma, some preacher, as I understand it. I stated that I was married in Tijuana on August 26, 1926. That is the only time he (Walter Olcott) was off from his work. I don't know where in Tijuana I was married. [Ap. 9.]

I was there when the ceremony was performed. Some Spanish fellow and his wife were present. I don't know them. I did not know who they were. I was introduced to them at the ceremony, as a witness. I had never seen them before. They were acquaintances of Mr. Olcott. After I was married I obtained a paper, a certificate like my first marriage, from the person performing the ceremony. It was in English



and Spanish. Our names were written in English. [Ap. 10-11.]

I did not personally file any application for a marriage certificate. We got the papers down there where we went to get married. [Ap. 13.]

I did not make any application for a license. [Ap. 15.]

(B) Testimony of John Roberts:

I knew Mr. Olcott very well, 19 or 20 years. We were intimate friends. Walter Olcott said to me "I didn't get married by a priest. We got married by a preacher." He took the *license* out of his pocket. I saw it was a marriage *license*. It was in Spanish. [Ap. 18.]

The paper looked like an official paper. "It was a license. There was 'Licencia,' there; I saw that. And of course, 'Licencia,' in Spanish, is 'License,' in English." [Ap. 19-20.]

Appellants have not referred to the testimony with reference to the fact that Walter Olcott and the claimant lived together as husband and wife for the reason that common law marriages have not been legal in California since long before 1926.

Other evidence in the record of the proceedings before the deputy commissioner with reference to whether there was or was not a marriage between claimant and Walter Olcott in Tijuana, Mexico on August 26, 1926 is as follows:

(A) Jesus Ruiz testified as follows:

I live in Tijuana. I am a lawyer admitted to practice in Mexico. I am a graduate of the School of Law of the State of Chiapas and also the Free School of Law of Mexico City. I have held official positions. In my State after I was admitted to practice I served as Attorney General of Justice of the State of Chiapas. I am admitted to practice in all the courts of the Republic of Mexico. [Ap. 19-20.]

Records are kept in Tijuana of the marriages performed during the year 1926. Those records are kept in the office of the Judge of the Civil Registrar. None of the records maintained in Tijuana have ever been destroyed since 1925; I have been there all those years myself. [Ap. 22-23.] Since 1917, up until 1932 the laws in effect were the laws of domestic relations, and in accordance with the law there was, as there is now, one official of the Civil Register. He is the Judge of the Civil Register, and that official is the one who performs all marriage ceremonies.

The requirements of Mexican law with reference to filing of an application for marriage in Tijuana at that time (1917 until 1932) were: There must be filed a petition to the official of the Civil Registry, a written application, and that application must be signed by the man and by the woman who wish to marry. It must also be signed by the father and mother of both contracting parties in case they are alive, and by two witnesses for both parties, who have known them for three years before the marriage. In that condition it should be expressed the name of the bride and the groom. The names of the father

and mother of each one of them should also be stated, where they lived, what was the occupation, their age, and the oath of their being no impediment to the marriage. The question of residence was taken very much into consideration, because only those could marry whose domicile was that of the official registrar.

There was only one person in Tijuana in 1926 who could solemnize a marriage. There is only one in each population in accordance with the law, and there was only one in Tijuana at that time. A judge of the civil court could not perform a marriage ceremony. Neither the Mayor of the town nor any other public officer could perform a marriage ceremony. In places where there is an official of the civil register, nobody else can perform the ceremony. Since 1884 up to date neither a priest nor minister of the gospel could perform a marriage in Lower California.

There was no such thing as a religious marriage. That is prohibited. It must first be a civil marriage and priests cannot marry two persons unless they bring a certificate of marriage of the civil registry.

I am sure there was a judge of the civil registry in Tijuana in August of 1926.

Applications are recorded because the procedure is as follows: The petition is filed; the judge calls on each of the persons who have signed an application, one at a time, in order that they may say whether or not that which is written is true. When the applications are presented to the judge, he calls them all in to ratify it. Then after ratifying the applica-



tion he fixes a time within eight days, and then when they are all present again he asks those who are to be married if they ratify their applications still, and if they still wish to be married, he then declares them to be married in the name of the law and in the name of society, and all that procedure is thereupon recorded in a book. There is a record made, written in a special book and in that book the married persons sign and the witnesses sign and all those who were present sign. The book is called the Book of Registry of Marriages, and that is kept in such manner. [Ap. 22-27.]

Of my own knowledge, with reference to the accuracy and the completeness of the records of marriages in Tijuana in 1926, the marriages legally held are properly registered or recorded, and in those records is shown the truth of what was done. [Ap. 28.] The residence requirements for a valid marriage in Tijuana in 1926, have always been, according to the Civil Code, six months of actual residence by both parties. [Ap. 28-29.]

There were no marriages by proxy in 1926. They did not do it in 1926 because Americans could come across the line and the judge of the civil registry was permitted to marry them by a special dispensation of the Governor of the State. All of those marriages, in cases of Americans going across the border in 1926 and becoming married, necessarily appear in the registry of civil status. [Ap. 30-31.] There was no way for an American going across the line to Tijuana and going through what they believed to be a marriage ceremony and getting something

which looks like a certificate and yet there not being a valid marriage recorded on the register of civil status; that was not the practice in 1926. At that time there were no proxy marriages. They were married legally; there was no necessity for them to commit that crime. [Ap. 33.]

At that time there were no marriages by proxies in Chihuahua. The law in Chihuahua with reference to marriages came into effect about a year and a half or two years ago. [Ap. 36.] I found the record for 1926 in order and well kept.

There is no likelihood, in the case of Americans going across the border to be married in Tijuana in 1926 or later, that the ceremony would be performed and the papers would be filled out and that for any reason they would then not be recorded because they have to sign the record. The record of the procedure is written in longhand in a bound book, the pages of which are numbered on both sides, and you cannot extract the leaves from the book, and at the conclusion of the ceremony the book must be signed at the foot of the written procedure. [Ap. 37.] The marriage record is right in the book at the time of the solemnizing of the marriage. That is, the performing of the ceremony, the solemnizing of the marriage, is all entered in the book and the signing of the book. That is what we call the solemnizing of the marriage. Without that record being signed there is no marriage. [Ap. 37-38.]

“Q. I am not speaking of the validity of what they do. Here when the ceremony is performed the papers are signed by the person performing the cere-

mony and they are then sent over to the county clerk's office to be recorded. Is there any practice like that in Tijuana for marriages? A. No. The judge who marries anyone in Tijuana has his book and writes it in the book.

“Q. At the time? A. At the time of performing the marriage.” [Ap. 38.]

At the time the lady sitting here at the counsel table, Mrs. Olcott, came and met me at the marriage registry three or four months ago, she told me the name of the two for whom I searched the record. That is necessary because in the margin of the record the names of the married parties appear. When I looked up the index or the document for Mrs. Olcott she wrote on a small piece of paper the name of the man and her name, and I took the paper. She said, “Here are the names.” I then went away and looked for the record. I looked under similar names, as well as the names which she gave me, at the office of the civil registrar, and the clerk there joined with me and we looked together. I looked for two years before 1926 and the year 1926 and two years after; five years altogether we looked. I also asked the lady if she remembered in what building she had been married, and if it was on the lower floor or upstairs. She could not explain to me how she got married. In 1926 there was no such thing as a common law marriage in Mexico, prior to 1917 there was such a law. [Ap. 38-39.]

(Note: The claimant testified that she gave Mr. Ruiz her maiden name and Mr. Olcott's to look up in the marriage book and records. [Ap. 40-41.] )



Mr. Ruiz also testified: "She gave me two names, but I don't remember them because they are in English. I personally went to look for them, because I saw she was very much interested and I personally went through the books and I could not find the marriage record. I made my search page by page, entry by entry. [Ap. 24.]

(B) The deputy commissioner conducted an independent investigation by inquiring of independent and impartial sources. On October 3, 1945 the deputy commissioner addressed a letter to the Consulate of Mexico at San Francisco, California outlining the issue with reference to whether or not the claimant was ever married to Walter Olcott and the second, third and fourth paragraphs digested the state of the record of the proceedings before the commissioner as it then existed. He then stated as follows:

"Several questions arise upon which I would appreciate any help that can be obtained from an impartial and authoritative source such as yourself or the Consulate to assist in determining as follows:

"(1) Are the records of marriages at Tijuana for a period including the year 1926 carefully, completely and accurately kept.

"(2) Upon the information stated above, is it possible or impossible that Mr. and Mrs. Olcott may have been validly married at Tijuana, notwithstanding the absence of an official record as testified to.

"(3) If you should happen to be in Tijuana in the near future as you indicate, would you be able to look through the records for that year and see what you can discover.

“(4) Is it possible, notwithstanding the absence of such record that Mr. and Mrs. Olcott may have been colorably married at Tijuana, *i. e.*, that they might have appeared before some person who might by argument be supposed to have some authority even though such authority does not now appear with complete validity.

“(5) How can one reconcile the so relatively large number of Americans going across the Border to Mexican towns such as Tijuana and returning with purported marriage certificates and believing themselves to be married, on the one hand, with an indicated much smaller number of cases in which records of such marriage are found in the legal register of marriages.

“It seems to be a matter of common knowledge that more American couples go through some form of ceremony across the Border, are given some form of certificate and return in the belief that a marriage has been performed, than Mexican law as to residence requirements, etc., would permit to be married with entries in the register of marriages performed by proper authority.

“Thanking you for any help you can give me in determining the real facts and probabilities of the case, I remain

“Yours very truly,

“WARREN H. PILLSBURY,

“Deputy Commissioner

“13th Compensation District.

“P.S. If a search should be made of the records, the information I have is that it was asserted to have been performed on August 26, 1926. Name of the husband was Walter Olcott. Mrs. Olcott states

she was married under her maiden name of Cora Kinzer Hartshorn and search might be made under the name of Cora Hartshorn. WHP.” [Ap. 43-45.]

In answer to this letter Mr. Ballesteros wrote on November 9, 1945, as follows:

“Mario Ballesteros, ‘Edificio Lelevier,’ Ensenada, Baya California, Mexico.

“November 9, 1945.

“United States Employees’ Compensation Commission, Thirteenth Compensation District, 417 Market Street, Room 318, San Francisco, California. Attention: Mr. Warren H. Pillsbury, Deputy Commissioner. File: Walter Olcott, 1017-42.

“Gentlemen:

“1. I have thoroughly checked the records of marriages at the Civil Register Office at Tijuana, Lower California, Mexico, and I have found that said marriages for a period of 31 years, including the year 1926, are carefully, completely, and accurately kept, as well as legally maintained.

“2. and 3. When I examined said records as stated above, I found that there was no records of marriage of Mr. and Mrs. Walter Olcott on August 26, 1926, or for any time during the year of 1926.

“3. According to article 46 of the Civil Code then in effect, which is worded as follows: ‘The civil status of persons can only be proved by the respective entries in the register. No other document nor method of proof is admissible to prove the civil status, except in the cases provided for by articles 45 and 358.’ (Art. 45: ‘When no registers have existed, or they have been lost or destroyed, or effaced, or some of



the leaves are missing on which it might be supposed (*sic*) the records was made, proof of the fact or act by means of instruments or witnesses may be received, but if one of the registers has been rendered useless and the duplicate exists, the proof shall be taken from the latter, without admitting any other class of proof (*sic*).’ And art. 358: ‘In the cases of abduction or violation, when the time of the offense coincides with the conception, the tribunals may, at the instance of the interested parties, declare the paternity.); from the information stated above, it is impossible that Mr. and Mrs. Olcott were validly married at Tijuana. The Civil Register Offices have been in existence in Tijuana and instituted since 1914, and in this particular case, the records having not destroyed or effaced, and since none of the leaves are missing on which it might be supposed the record was made, and since therefore, no proof of the fact or act by means of instruments or witnesses may be received; and there being a duplicate book of the register which does not contain any record of such marriage, it is impossible that Mr. and Mrs. Olcott could have been legally or colorably married in Tijuana. They might have appeared before some person, but without any authority to perform marriages.

“5. The number of purported marriages by American citizens in Tijuana is not as large as commonly believed. The purported marriages which are supposed to have been performed in Tijuana, of which records no exists, are, without doubt, done by the parties for their own convenience or for other illegal purposes.

“Also, when I examined said records as stated above, I found that there was no records of marriage under Mrs. Olcott’s maiden name of Cora Kinzer

Hartshorn on August 26, 1926, or for any time during the year of 1926.

“Wishing that this information will be complete as requested, I remain

“Yours very truly,

“/s/ MARIO BALLESTEROS.”

[Ap. 45-48.]

On December 5, 1945, the deputy commissioner sent another letter to Mr. Ballesteros with reference to marriages by proxy. [Ap. 167-168.]

In answer to that letter Mr. Ballesteros, on January 31, 1946, wrote a letter to the deputy commissioner making it very clear that the law of the State of Chihuahua did not authorize proxy marriages until sometime later than the year 1926 and that proxy marriages were not governed by any law nor permitted by any state of Mexico to be valid and recognized prior to or in August 1926. [Ap. 173-174.]

From the evidence and proceedings before the deputy commissioner it is quite clear that the claimant is not a surviving wife of Walter Olcott. The appellee relied upon a presumption that the claimant had contracted a valid marriage simply because she lived with the deceased. Presumptions must be ignored if substantial contrary evidence is introduced. (*New Amsterdam etc. v. Hoage*, 46 F. (2d) 837; *Delvecchio v. Bowers*, 296 U. S. 280, 80 L. Ed. 229.)

The claimant in this case did not testify to any facts from which it could be inferred, in view of the evidence showing the law of Mexico with reference to marriage, that there was any ceremony performed by any person having authority to do so in accordance with the requirements.

In the case of *Bolin v. Marshall*, 76 F. (2d) 668, this Court decided that whether or not the claimant involved was the surviving wife of a deceased employee depended upon the application of the law of Oregon and held that the claimant involved in that case was not entitled to an award because she had not proved that she was married in accordance with the law of the State of Oregon.

In the case of *MacArthur v. I. A. C.*, 220 Cal. 142, 29 P. (2d) 846, the claimant relied on a purported common law marriage in Canada. The California Supreme Court held that as the purported marriage was not contracted in accordance with the law of Canada it was invalid and the claimant was not entitled to a death benefit award.

It was conceded by the appellee in the court below that the case does not involve common-law status nor the validity of common-law marriage in California. [Ap. 199.]

“In those cases in which it is necessary to prove a marriage in fact, as distinguished from a marriage inferred by circumstances, (to wit, a common-law marriage) it must be shown that the person solemnizing the marriage was one having authority to do so, and such authority cannot be proved by his general reputation.”

38 *Corp. Jur.* 1310;

*People v. Spitzer*, 57 Cal. App. 593, 208 Pac. 181.

Presumptions so heavily relied upon by the appellee, have no probative value in a federal court. (*Liberty Mutual Ins. Co. v. Gray*, 137 F. (2d) 926; *Salmon Bay etc. v. Marshall*, 93 F. (2d) 1 and *New York etc. v. Gamer*, 303 U. S. 161.)

The evidence required to support an award must be substantial. (*Bernatowicz v. Nacirema*, 142 F. (2d) 385; *Fireman's Fund v. Peterson*, 120 F. (2d) 547.)



## POINT II.

The Judgment of the District Court and Each of Its Rulings as Set Forth in the "Ruling on Motion for a Trial de Novo, and Motion to Set Case for Trial" Signed and Dated January 6, 1948, Are and Each Thereof Is in Contravention of the Fifth Amendment to the Constitution of the United States in That Such Rulings and Each Thereof Deprive Libelants of Their Property Without Due Process of Law.

This point involves a consideration of Assignments of Error VII, VIII and X. [Ap. 226-227.]

It is quite clear from the statements made by the deputy commissioner during the oral proceedings that he was proceeding on the theory that any kind of a purported procedure in Tijuana which the claimant thought was a marriage was sufficient to entitle her to an award. This is made very clear by the record. The deputy commissioner said:

"I don't wish to try the question of the validity of the purported marriage. . . . The question is open in this proceeding as to whether there was any marriage at all, but not the question of whether a purported marriage may or may not have been valid and in compliance with all formalities." [Ap. 20.]

The deputy commissioner also said:

"If it is shown to be a fact that the claimant and Mr. Olcott did go to some Mexican office to a place wherein people were getting married and did go through some form of marriage and that she was given a certificate of marriage, then I would not assume jurisdiction here to determine whether those formalities sufficiently complied with Mexican law.

That question is one which should come up, if at all, in proceedings to annul (sic) a marriage, and which is matter for the courts. In so far as there may be a contention, if there is one, that she did not go to Tijuana, did not go to any person, that there was no effort to have the marriage made, that question would be open and you could offer evidence on that.”  
[Ap 22.]

The Fifth Amendment to the Constitution of the United States is directly involved and it is the contention of the appellants that the refusal of the deputy commissioner and the lower court to require the claimant to show a legal marriage has deprived appellants of their property without due process of law. The elementary principles require a full and fair hearing and a decision with reference to every question of fact and law involved in such proceeding. The appellants were not accorded this right.

### Conclusion.

It is respectfully contended that the decree of the lower court should be reversed and that a final decree should be entered in favor of appellants setting aside and vacating the compensation order and enjoining the enforcement thereof, or that the court below should be directed to conduct a trial *de novo* on the issue of marriage.

Respectfully submitted,

LASHER B. GALLAGHER,

*Proctor for Appellants.*

No. 11,902  
IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT

---

FREEMAN STEAMSHIP COMPANY and FIREMAN'S FUND  
INSURANCE COMPANY,

*Appellants,*

*vs.*

WARREN H. PILLSBURY, Deputy Commissioner, United  
States Employees' Compensation Commission,

*Appellee.*

---

Upon Appeal From the District Court of the United States  
for the Southern District of California  
Southern Division.

---

**BRIEF FOR WARREN H. PILLSBURY, DEPUTY  
COMMISSIONER.**

---

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AUG 10 1948

PAUL P. O'BRIEN,

CLERK





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No. 11,902

IN THE

**United States Circuit Court of Appeals**  
**FOR THE NINTH CIRCUIT**

---

FREEMAN STEAMSHIP COMPANY and FIREMAN'S FUND  
INSURANCE COMPANY,

*Appellants,*

*vs.*

WARREN H. PILLSBURY, Deputy Commissioner, United  
States Employees' Compensation Commission,

*Appellee.*

---

**BRIEF FOR WARREN H. PILLSBURY, DEPUTY  
COMMISSIONER.**

---

**Jurisdiction.**

This proceeding was brought by appellants under Section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, c. 509, 44 Stat. 1436, as amended, 33 U. S. C. 921(b), to set aside a compensation order issued by Warren H. Pillsbury, Deputy Commissioner [Ap. 3-49]. Final order dismissing the libel was entered by the District Court on January 7, 1948 [Ap. 224]. Notice of appeal and petition for appeal were filed on March 17, 1948, the appeal being allowed by an order entered March 18, 1948 [Ap. 225, 228, 229]. The jurisdiction of this Court is invoked under Section 128(a) of the Judicial Code, as amended, 28 U. S. C. 225(a).



### Questions Presented.

1. Whether in an injunction proceeding brought under Section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act to set aside a compensation award as being not in accordance with law, the plaintiff is entitled to a trial *de novo* on the issue as to whether the claimant is the widow of the deceased employee.

2. Whether the District Court erred in ruling that the compensation order is in all respects in accordance with law.

3. Whether the order of the District Court dismissing the libel deprives appellants of their property without due process of law in violation of the Fifth Amendment.

### Statute Involved.

Section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act (Act of March 4, 1927, c. 509, Sec. 21(b), 44 Stat. 1436, as amended, 33 U. S. C. 921(b)), provides in pertinent part:

"If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the district Court of the United States for the District of Columbia if the injury occurred in the District.)

\* \* \*

### Statement of the Case.

Cora E. Olcott filed a claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act, c. 509, 44 Stat. 1424, as amended, 33 U. S. C. 901 *et seq.*, on account of the death of her husband, Walter Olcott, on November 12, 1944, which resulted from injuries he sustained while employed as a stevedore by the Freeman Steamship Company at San Diego Harbor, California [Ap. 56-57]. This claim was controverted by the employer and its insurance carrier, the Fireman's Fund Insurance Company, and hearings were duly held by Warren H. Pillsbury, Deputy Commissioner, on March 7, 1945, and May 23, 1945 [Ap. 59, 61-119, 125-157]. At these hearings the only issue as to which any contention is now made was the issue as to the relationship of the claimant to the deceased employee [Ap. 64-65, 66]. On February 18, 1946, the Deputy Commissioner entered a compensation order in which he found, *inter alia*, that the claimant "\* \* \* is the widow of the deceased employee, Walter Olcott, was married to him on August 26, 1926, and was living with him as his wife and dependent upon him for support at the time of his injury," and awarded her a death benefit of \$13.13 per week, plus \$200 for burial expenses [Ap. 174-177].

On March 5, 1946, the Freeman Steamship Company and the Fireman's Fund Insurance Company filed a libel for injunction under Section 21(b) of the Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C.

921(b), alleging that the award was not in accordance with law in that there is no evidence to sustain the finding that Cora E. Olcott was married to Walter Olcott [Ap. 3-49]. Deputy Commissioner Pillsbury answered denying the material allegations of the libel, alleging that the findings of fact in the compensation order complained of are supported by evidence and not subject to judicial review, and that the compensation order is in all respects in accordance with law [Ap. 50-52]. On October 25, 1946, a motion for summary judgment on behalf of the Deputy Commissioner was denied without prejudice to any further proceedings [Ap. 178-179, 208-209]. Thereafter, on June 26, 1947, libelants filed a motion to set the cause for trial and for a trial *de novo* on the issue as to whether the claimant was actually married to the deceased employee and was his surviving wife, on the ground that the relationship of the claimant to the deceased was a jurisdictional and basic fact [Ap. 210-211]. On January 7, 1948, the District Court denied libelants' motions and dismissed the libel on the ground that the compensation order was in all respects in accordance with law [Ap. 224]. This appeal followed [Ap. 225-229].



## Summary of Argument.

### I.

Appellants' contention that they were entitled to a trial *de novo* on the issue as to whether the claimant is the surviving wife of the deceased employee is not supported by *Crowell v. Benson*, 285 U. S. 22, on which they rely, as this is not a constitutional jurisdictional issue such as was involved in that case. In any event, the doctrine of trial *de novo* as to jurisdictional facts laid down in *Crowell v. Benson* no longer retains vitality in the light of later decisions by the Supreme Court.

### II.

The Deputy Commissioner found that Cora E. Olcott is the widow of the deceased employee within the meaning of the Longshoremen's and Harbor Workers' Compensation Act. The evidence in support of this finding measures up fully to the quantum of proof necessary to establish a valid marriage in California, where the parties were domiciled. Since it is supported by evidence and is not inconsistent with law, this finding of the Deputy Commissioner is final and conclusive.

### III.

Appellants' argument that the refusal of the Deputy Commissioner and the court below to require the claimant to show a legal marriage has deprived them of property without due process of law is merely another way of arguing that the evidence does not sustain the finding of a marriage by the Deputy Commissioner, which is discussed in the point next above. In so far as it embodies any other argument, it presents a contention which was not presented to the court below for decision, and hence may not be urged in this Court.

## ARGUMENT.

### I.

#### **Appellants Were Not Entitled to a Trial De Novo on the Issue as to Whether the Claimant Is the Surviving Wife of the Deceased Employee.**

Appellants contend that the principle of *Crowell v. Benson*, 285 U. S. 22, is applicable to the present case, and that in the light of that decision by the Supreme Court they are entitled to a trial *de novo* on the issue as to whether Cora E. Olcott is the surviving wife of Walter Olcott, the deceased employee [Br. 5-7). This contention is based on a mistaken interpretation of the opinion in that case.

*Crowell v. Benson* arose in the United States District Court for the Southern District of Alabama by the filing of a suit to enjoin the enforcement of an award made under the Longshoremen's and Harbor Workers' Compensation Act, which award was rested upon a finding by Crowell, the deputy commissioner, that the claimant was injured while in the employ of Benson and while performing service upon the navigable waters of the United States. Benson's complaint alleged that the claimant was not in his employ, and that the Longshoremen's Act was unconstitutional because it violated the due process clause of the Fifth Amendment, the provisions of Article III with respect to the judicial power of the United States, and other portions of the Federal Constitution. The district judge granted a hearing *de novo* upon the factual question of employment, expressing the opinion that the Act would be invalid if not construed to permit the court to hear and to consider all the facts. *Benson v. Crowell*, 33 F. (2d) 137, 142; 38 F. (2d) 306. The case was transferred to the admiralty docket, the fact of employ-

ment was put in issue by answers, and oral evidence of both parties was heard. The District Court decided that the claimant was not in the employ of Benson and restrained the enforcement of the award. This decree was affirmed on appeal. *Crowell v. Benson*, 45 F. (2d) 66 (C. C. A. 5).

The Supreme Court, with three justices dissenting, also affirmed, holding that the Longshoremen's and Harbor Workers' Compensation Act was constitutional only if it was construed to permit a trial *de novo* on what was said to be the basic, jurisdictional issue as to whether the relation of master and servant existed, and that the District Court did not err in permitting a trial *de novo* on that issue. *Crowell v. Benson*, 285 U. S. 22, 62, 64, 65. The Court also held by way of *dictum*, as the question was not involved, that the same rule applied to the question of whether the accident occurred upon navigable waters of the United States. *Id.*, 54-55, 64. The majority opinion made it clear that power in the District Court to grant a trial *de novo* as to these two issues was considered necessary because they were deemed to involve questions of constitutional right in that they determined the existence of the congressional power to create the liability prescribed by the statute. *id.*, 55-56. Thus, while the issues as to employment and locality of the injury are referred to as relating to "fundamental facts" or "jurisdictional facts," it is apparent that the Court meant "constitutional jurisdictional facts," *i. e.*, facts which bring the case within the field in which Congress has the constitutional power to legislate, as distinguished from "statutory jurisdictional facts," *i. e.*, facts which bring the case within the ambit of the statute as passed by Congress. See *Washington Coach Co. v. National Labor Relations*



*Board*, 301 U. S. 142, 147; *Shields v. Utah Idaho R. Co.*, 305 U. S. 177, 184; *Yakus v. United States*, 321 U. S. 414, 473 (dissenting opinion), Dickinson, *Crowell v. Benson: Judicial Review of Administrative Determinations of Questions of "Constitutional Fact"* (1932), 80 U. Pa. L. Rev. 1055.

It follows, therefore, that in order to bring this case within the principle of the *Crowell* decision, appellants must show here that the validity of the marriage determines the power of Congress under the Constitution to require the payment of compensation to the surviving wife of a longshoreman. Appellants have not suggested any reason why the validity of the marriage presents a constitutional issue. Certainly it has no more significance so far as constitutional rights are concerned than the question as to whether a parent was dependent on the deceased, and the Supreme Court has held that a finding of dependency by a deputy commissioner, if there is evidence to support it, is conclusive, and the District Court may not grant a trial *de novo* as to that issue. *L'Hote v. Crowell*, 286 U. S. 528. See *South Chicago Co. v. Bassett*, 309 U. S. 251, 258. Indeed, the Supreme Court has resisted all other efforts to add to the category of jurisdictional issues as to which a trial *de novo* may be had. *Voehl v. Indemnity Insurance Co.*, 288 U. S. 162; *Parker v. Motor Boat Sales*, 314 U. S. 244 (whether accident arose out of and occurred in the course of the employment); *Del Vecchio v. Bowers*, 296 U. S. 280 (whether death was suicide or accidental); *South Chicago Co. v. Bassett*, 309 U. S. 251 (whether employee was a crew member); *Marshall v. Plets*, 317 U. S. 383, 388 (whether the claim was timely filed). The question as to whether the claimant is the widow of the deceased employee, like the issues

dealt with in the cases above cited, relates merely to the applicability of the Longshoremen's Act, and has no bearing whatever on the constitutional power of Congress in this field of legislation. There is nothing in *Crowell v. Benson*, therefore, to support appellants' demand for a trial *de novo*.

In any event, the doctrine of trial *de novo* as to jurisdictional facts laid down in *Crowell v. Benson*, 285 U. S. 22, no longer retains vitality in the light of later decisions by the Supreme Court. *Davis v. Department of Labor*, 317 U. S. 249, involved a claim made under a Washington workman's compensation statute by the widow of a workman who was drowned when he was knocked from a barge into the Snohomish River while helping to dismantle an abandoned drawbridge. The state statute provided compensation for employees such as decedent if its application could be made "within the legislative jurisdiction of the state." In that case the Washington Supreme Court held that the state could not, consistently with the Federal Constitution, make an award to the widow of a workman drowned in a navigable river. The Supreme Court of the United States reversed, relying principally upon the presumption of constitutionality in favor of a state statute in holding that this claim was within the jurisdiction of the state. In discussing the question as to whether the employment in which decedent was engaged was within the legislative jurisdiction of the state, the court said (317 U. S. at pp. 256-257):

"Faced with this factual problem we must give great—indeed, presumptive—weight to the conclusions of the appropriate federal authorities and to the state statutes themselves. Where there has been a hearing by the federal administrative agency en-



trusted with broad powers of investigation, fact finding, determination, and award, our task proves easy. There, we are aided by the provision of the federal act, 33 U. S. C. §920, which provides that, in proceedings under that act, jurisdiction is to be 'presumed, in the absence of substantial evidence to the contrary.' Fact findings of the agency, where supported by the evidence, are made final. Their conclusion that a case falls within the federal jurisdiction is therefore entitled to great weight and will be rejected only in cases of apparent error. It was under these circumstances that we sustained the Commissioner's findings in *Parker v. Motor Boat Sales, supra*."

In view of the fact that the Supreme Court had previously held unconstitutional a state statute providing benefits for certain maritime employees,<sup>1</sup> the issue in the *Davis* case was undoubtedly a constitutional jurisdictional issue, so that the language quoted above indicates a complete recession from the position taken in *Crowell v. Benson*, 285 U. S. 22.<sup>2</sup> See, also, *Cardillo v. Liberty Mutual Insurance Co.*, 330 U. S. 469, 474.

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<sup>1</sup>*Southern Pacific Co. v. Jensen*, 244 U. S. 205. See *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, and *Washington v. W. C. Dawson & Co.*, 264 U. S. 219.

<sup>2</sup>Two comments by Mr. Justice Frankfurter on *Crowell v. Benson* are significant. In his dissenting opinion in *Yonkers v. United States*, 320 U. S. 685, he said (p. 595): "\* \* \* The opinions in *Crowell v. Benson*, 285 U. S. 22, and the casuistries to which they have given rise bear unedifying testimony of the morass into which one is led in working out problems of judicial review over administrative decisions by loose talk about jurisdiction."

Again, in a concurring opinion in *Estep v. United States*, 327 U. S. 114, Mr. Justice Frankfurter said (p. 142): "This argument revives, if indeed it does not multiply, all the casuistic difficulties spawned by the doctrine of 'jurisdictional fact.' In view of the criticism which that doctrine, as sponsored by *Crowell v. Benson*, 285 U. S. 22, brought forth and of the attritions of that case through later decisions, one had supposed that the doctrine had earned a deserved repose. \* \* \*"



II.

**The Deputy Commissioner's Finding That Cora E. Olcott Is the Widow of the Deceased Employee Is Supported by Evidence and Is Therefore Final and Conclusive.**

The Deputy Commissioner in the compensation order complained of found the facts with reference to the employee's marital status to be as follows [Ap. 176]:

“That Cora E. Olcott, claimant herein, born February 27, 1879, is the widow of the deceased employee, Walter Olcott, was married to him August 26, 1926, and was living with him as his wife and dependent upon him for support at the time of his injury.  
\* \* \*”

The following is a reference to so much of the testimony taken at the hearings before the Deputy Commissioner as is considered sufficient to show that the above-mentioned finding of fact is supported by evidence:

*Cora E. Olcott* testified at the hearing on March 7, 1945 that she was married to the deceased, Walter Olcott, on August 26, 1926, at Tijuana, Mexico [Ap. 67, 113], and continued to live with him until his last illness [Ap. 67]; that they had no children and were never divorced; that she is 65 years of age; that she does not have a marriage certificate [Ap. 68]; that she had the papers but has since misplaced them [Ap. 132]; that they were not married in a church; that the deceased made all the arrangements; that some Spanish individual and his wife acted as witnesses to the ceremony [Ap. 113]; that these witnesses were acquaintances of the deceased [Ap. 114]; that the deceased had been well acquainted in Tijuana for some time [Ap. 128]; that after the ceremony she received a

certificate written in both English and Spanish, that is, the names were in English; that she has since misplaced the certificate; that she went to Tijuana, Mexico, in search of the record, but has been unable to locate it; that she inquired at the Government office at Tijuana and was told by the officials that they could not find the record; that such officials did not tell her whether they ever had such record, but did say they could not find the record then; that since 1926 she lived with the deceased as his wife, publicly and honorably [Ap. 114-115].

At the hearing on May 23, 1945, before the deputy commissioner Mrs. Olcott testified that many other persons could not find such records at Tijuana [Ap. 129]; that she could not find the place at which they had been married, but that at the time she was married there were a number of places where persons might be married [Ap. 129]; that the ceremony took place in a little bureau of some kind where people go to get married and there were others getting married at the same time [Ap. 131].

It was stipulated at the hearing on May 23, 1945, that other witnesses if called would testify that the claimant and deceased lived together and conducted and deported themselves as husband and wife for many years [Ap. 154].

*John Roberts* testified at the hearing on March 7, 1945, that he had known Mr. and Mrs. Olcott for 19 or 20 years, having been very intimate friends, and having worked with Mr. Olcott for many years; that prior to the time that they were married, Mr. Olcott came to him and told him that he (Olcott) was going to get married; that Mr. Olcott laid off a week and was married; that he then returned with his wife and resumed residence in San

Diego; that shortly afterwards Mr. Olcott came by the witness' house with Mrs. Olcott and took both the witness and his wife to see the house they intended to rent; that Olcott showed him the marriage license, and he noted that it was a marriage license in the Spanish language; that this took place about 18 years ago, and since that time Mr. and Mrs. Olcott have lived together as husband and wife, and have introduced themselves as such [Ap. 116-119].

In as much as the Olcotts were unquestionably domiciled in California at the time of Walter Olcott's death, it is entirely proper to weigh the evidence as to the validity of their marriage in accordance with the law of California. *Travers v. Reinhardt*, 205 U. S. 423, 440. Section 57 of the Civil Code of California provides:

“Proof of Marriage.—Consent to marriage and solemnization thereof may be proved under the same general rules of evidence as facts are proved in other cases.”

Section 1963 of the California Code of Civil Procedure provides in pertinent part:

“Disputable Presumptions.—All other presumptions are satisfactory if uncontradicted. They are denominated disputable presumptions, and may be controverted by other evidence. The following are of that kind:

\* \* \* \* \*

30. That a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage; \* \* \*



It is settled law in California that under Section 57 of the Civil Code parties to or persons present at the solemnization of a marriage may testify to the fact within their knowledge that such marriage actually took place, and when to such testimony there is added evidence that since the marriage the parties thereto have deported themselves as husband and wife, thus raising the presumption under Section 1963(30) of the Code of Civil Procedure that they have entered into a lawful contract of marriage, a *prima facie* case has been established. *Budd v. Morgan*, 187 Cal. 741, 744, 203 Pac. 754; *In re Morgan*, 106 Cal. App. 602, 603, 289 Pac. 647. Where such evidence had been offered, the finding of a state administrative board that it was insufficient to prove marriage was set aside, the court holding that the fact that deceased had stated he regarded marriage as "a slip of paper" and that no record of the marriage was produced was merely negative evidence, not touching the question of the sufficiency of the evidence adduced sustaining the marriage between the parties. *Landsrath v. Industrial Acc. Com.*, 77 Cal. App. 509, 514-516, 247 Pac. 227. Even the fact that the marriage certificate was not recorded is not sufficient to destroy such a *prima facie* case. *Krizman v. Industrial Acc. Com.*, 14 Cal. App. (2d) 419, 422, 58 P. (2d) 405.

The presumption of a lawful marriage arising from proof that a man and woman have deported themselves as husband and wife is not only evidence in itself, but it may, in certain cases, outweigh positive evidence adduced against it. *Estate of Chandler*, 113 Cal. App. 630, 633, 299 Pac. 110. See *Smellie v. Southern Pac. Co.*, 212 Cal. 540, 549, 299 Pac. 529; *People v. Chamberlain*, 7 Cal. (2d) 257, 260, 60 P. (2d) 299; *Khoury v. Barham*, 85 Adv. Cal. App. 295, 305, 192 P. (2d) 823.

California courts have not distinguished between marriage in Mexico and marriages in other jurisdictions, so far as the quantum of proof necessary to establish a *prima facie* case is concerned.<sup>3</sup> In *Estate of Chandler*, 113 Cal. App. 630, 299 Pac. 110, the court sustained the validity of a Mexican marriage in circumstances strikingly similar to those in the instant case. There an issue was raised in a probate proceeding as to whether property acquired by the decedent between the time of his marriage in Mexico in 1909 and a subsequent marriage ceremony observed by the same parties in 1918, should be classed as community property. This question turned, of course, on the validity of the Mexican marriage. The widow testified that she was married to decedent on November 22, 1909 in Tijuana, Mexico. She described the ceremony in considerable detail and testified that at the time of the ceremony a marriage certificate was given to the decedent; that after they had returned to her mother's home in Los Angeles she introduced decedent as her husband and he showed the marriage certificate to her mother; and that after spending the night at her mother's home they went to San Bernardino, where they lived together as man and wife until her husband's death almost

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<sup>3</sup>*MacArthur v. Industrial Acc. Com.*, 220 Cal. 142, 29 P. (2d) 846, cited by appellants (Br. 20), is distinguishable from the cases cited above and does not lay down any special rule for proving foreign marriages. There the claimant did not rely on a ceremonial marriage, so that she could be aided by the presumption in favor of the validity of a marriage ceremony arising upon proof that a ceremony was performed. Instead, the claimant relied on a common law marriage entered into in Canada, and there is no presumption as to the validity of a common law marriage. *Bolin v. Marshall*, 76 F. (2d) 668 (C. C. A. 9), also cited by appellants (Br. 20), is similarly distinguishable, as there the claimant relied on a common law marriage contracted in Oregon.



twenty years later. No record of the marriage could be found in Tijuana, and it does not appear that the marriage certificate was produced at the trial. In sustaining the validity of this marriage the court said (113 Cal. App. at 633):

“\* \* \* It seems to be settled in this state that a party to a marriage may testify as to its solemnization (sec. 57, Civ. Code; *Estate of Richards*, 133 Cal. 524 [65 Pac. 1034]; *Budd v. Morgan*, 187 Cal. 741 [203 Pac. 754]; *Landsrath v. Industrial Acc. Com.*, 77 Cal. App. 509 [247 Pac. 227].) Under the circumstances here shown there is a strong presumption that this was a legal marriage (subd. 30; sec. 1963, Code Civ. Proc.). In *Wilcox v. Wilcox*, 171 Cal. 770 [155 Pac. 95, 97], the court quotes with approval from Bishop on Marriage and Divorce, as follows:

“‘Every intendment of the law leans to matrimony. When a marriage has been shown in evidence, whether regular or irregular, and whatever the form of proof, the law raises a strong presumption of its legality,—not only casting the burden of proof on the party objecting, but requiring him throughout, in every particular, to make plain, against the constant pressure of presumption, the truth of law and fact that it is illegal and void.’”

That decision was followed in *Estate of Crawford*, 69 Cal. App. (2d) 609, 160 P. (2d) 65, where the evidence showed that the parties, who were residents of Los Angeles, had gone to the office of a Mr. Soriano in Tijuana, Mexico, had signed papers and answered certain questions, and then had paid \$23.00 to Mr. Soriano, who pronounced them man and wife. Two weeks later they received by mail papers which showed a proxy marriage in Juarez,



Mexico, based upon the appearance of the parties at Tijuana and their nomination of proxies. The court held that even without the record of the proxy marriage, the testimony as to the marriage ceremony in Tijuana and subsequent cohabitation was sufficient to raise the presumption that the marriage was valid and legal.

To rebut the presumption of a valid marriage based on Section 1963(30) of the California Code of Civil Procedure and the evidence of a marriage ceremony followed by more than eighteen years cohabitation as man and wife, appellants rely on evidence as to the Mexican law relating to marriages which, they contend, establishes requirements for a valid marriage wholly inconsistent with the claimant's testimony (Br. 10-19). However, the probative value of the evidence relied on is very doubtful. Jesus Ruiz, a lawyer from Tijuana who testified as an expert witness on Mexican law, stated that "six months of actual residence and doing business" in Tijuana by both parties was a requirement of a valid marriage, but he admitted on cross-examination that at least three-fourths of all the marriages recorded in Tijuana for 1926 involved people who had come over the border from the United States for the purpose of getting married [Ap. 143, 149-150]. The explanation given was that the Governor of the State could waive the requirement of residence [Ap. 143, 145, 148]. There is no evidence that these executive dispensations did not cover other requirements as to which Ruiz testified. It is a reasonable inference that they did, since, for example, it is highly improbable that the great number of United States citizens who were married in Tijuana in 1926 each complied with the requirement [Ap. 138-139] that the application for marriage must be signed by both

the father and mother of each contracting party, as well as by two witnesses who had known the parties for three years. As for the failure to find any record of the Olcotts' marriage, Ruiz admitted that he had not searched the records at Mexicali, where duplicate original records, equally valid, of Tijuana marriages were kept [Ap. 148]. Moreover, although Ruiz testified that in 1926 proxy marriages were not legal in Tijuana [Ap. 147], the American Consul General in Mexico advised the Deputy Commissioner that the Mexican Law Governing Family Relations of April 9, 1917, which was in effect in 1926 for the Federal District and Territory of Lower California (in which Tijuana is located), provided [Ap. 172]:

“Article 3. On the day and hour designated for the performance of the marriage, there must be present before the Civil Judge, at the place the latter may have determined upon, the parties thereto, in person *or through a special representative legitimately appointed, \* \* \**” (Emphasis supplied.)

Since there was clearly sufficient evidence to sustain a finding that the Olcotts were legally married, the substance of appellants' argument is that their evidence as to the Mexican law completely rebutted the evidence establishing the marriage. However, the Mexican law and its application to the case was a question of fact to be determined by the Deputy Commissioner as the trier of fact. *Shapleigh v. Mier*, 83 F. (2d) 673, 676-677 (C. C. A. 5), affirmed, 299 U. S. 468. We submit that his finding is conclusive. *Cardillo v. Liberty Mutual Co.*, 330 U. S. 469, 477-478; *South Chicago Co. v. Bassett*, 309 U. S. 251, 257-258.

III.

**Appellants Have Not Been Deprived of Their Property Without Due Process of Law.**

Appellants' concluding argument is "that the refusal of the deputy commissioner and the lower court to require the claimant to show a legal marriage has deprived appellants of their property without due process of law" (Br. 22). As the basis for this argument appellants quote statements by appellee, the Deputy Commissioner, to the effect that if it were shown that the claimant and Mr. Olcott went to a Mexican office where people were getting married, went through a marriage ceremony and received a certificate of marriage, he "would not assume jurisdiction here to determine whether those formalities sufficiently complied with Mexican law" [Br. 21-22; Ap. 134-136]. Whatever the Deputy Commissioner may have said during the hearings, the fact remains that he admitted the expert testimony as to the Mexican law offered by appellants, and after the hearings he made an extensive inquiry into the Mexican law relating to marriage and incorporated the results of his investigation in the record [Ap. 133-154, 158-174]. Obviously he would not have made such an investigation if he had not intended to consider the Mexican law in making his findings. Appellants' contention that the claimant was not required to show a legal marriage is merely another way of arguing that evidence of a ceremony of marriage followed by more than eighteen years of cohabitation as husband and wife is not *prima facie* proof of a valid marriage under Cali-



fornia law. But, as we have shown in the discussion of the preceding point, such evidence is sufficient to establish a valid marriage.

In so far as appellants may now be seeking to do anything more than challenge the sufficiency of the evidence to sustain the findings, they are raising a contention which was never presented to the District Court for decision. Their libel charges only that the award is not in accordance with law in that there is no evidence sufficient to sustain the finding that Walter Olcott was the husband of Cora E. Olcott [Ap. 48], and the motions filed by appellants do not present the contention which they now raise [Ap. 210-211]. Objections to alleged erroneous rulings by the Deputy Commissioner should have been presented for review by the District Court. Having failed to raise this question in the court below, appellants may not raise it now on appeal. *Lumbermen's Mut. Casualty Co. v. McIver*, 110 F. (2d) 323 (C. C. A. 9), certiorari denied, 311 U. S. 655; *Hawaii Consol. Ry. v. Borthwick*, 105 F. (2d) 286 (C. C. A. 9).

Conclusion.

For the foregoing reasons, it is respectfully submitted that the decree of the court below dismissing the libel was proper and should be affirmed.

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No. 11902

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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FREEMAN STEAMSHIP COMPANY and FIREMAN'S FUND  
INSURANCE COMPANY,

*Appellants,*

*vs.*

WARREN H. PILLSBURY, Deputy Commissioner, U. S.  
EMPLOYEES' COMPENSATION COMMISSION,

*Appellee.*

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## APPELLANTS' REPLY BRIEF.

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*Appellee.*

---

## APPELLANTS' REPLY BRIEF.

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Appellants will reply to appellee's points in the same order in which they are set forth in appellee's brief.

### I.

Crowell v. Benson, 285 U. S. 22, Fully Supports Appellants' Right to a Trial de Novo on the Issue as to Whether the Claimant Is the Surviving Wife of the Deceased Employee and the Doctrine of That Case Has Not Been Overruled or Limited by Any Decision.

It is apparent from appellee's brief that both he and the appellants have made a thorough search for decisions by the Supreme Court subsequent to the case of *Crowell v.*

*Benson*, for the purpose of ascertaining whether that decision has been overruled or limited. Appellee was unable to find any case wherein the Supreme Court overrules or limits the *Crowell* decision. All of the cases referred to by the appellee in his brief have been re-examined by appellants and they are unable to find anything therein said which remotely supports the contention of the appellee that "the doctrine of trial *de novo* as to jurisdictional facts laid down in *Crowell v. Benson* no longer retains vitality in the light of later decisions by the Supreme Court." (App. Br. p. 5.)

Although appellants quoted only a portion of the language used by the Supreme Court in the case of *Crowell v. Benson* in their opening brief, on page 6, they thought that portion would be sufficient because it highlighted the importance of the relation between the two parties involved in that case which the Supreme Court stated was the pivot of the statute and which underlies the constitutionality of the statute in so far as it purported to provide for liability without fault.

An examination of the complete opinion in the case of *Crowell v. Benson* strongly supports the contention of the appellants that they were entitled to a trial *de novo* in the District Court with reference to whether or not the claimant was the surviving wife of Walter Olcott. In 285 U. S., at pages 37 and 38, the Supreme Court stated that the act has two limitations that are fundamental. Of course, in that case the Court was not dealing with a claim made by a widow and therefore the two fundamental limitations referred to were (1) that the injury must occur upon the navigable waters of the United States and (2) that the act applies only when the relation of master and servant exists.



Thus two constitutional issues were involved in that case. The first one relates to the power of the Congress to legislate with reference to maritime matters. The second relates to the power of the Congress to impose liability without fault.

The fact that the Court was considering fundamental issues and applying well established principles is clear from that part of the opinion commencing in 285 U. S. at page 56. The Court says:

“In the present instance, the Congress has imposed liability without fault only where the relation of master and servant exists in maritime employment and, while we hold that the Congress could do this, the fact of that relation is the pivot of the statute and, in the absence of any other justification, underlies the constitutionality of this enactment. If the person injured was not an employee of the person sought to be held, or if the injury did not occur upon the navigable waters of the United States, there is no ground for an assertion that the person against whom the proceeding was directed could constitutionally be subjected, in the absence of fault upon his part, to the liability which the statute creates.

“In relation to these basic facts, the question is not the ordinary one as to the propriety of provision for administrative determinations. Nor have we simply the question of due process in relation to notice and hearing. It is rather a question of the appropriate maintenance of the Federal judicial power in requiring the observance of constitutional restrictions. It is the question whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, an administrative agency—in this instance a single deputy commissioner—for the final determination of the existence of the facts

upon which the enforcement of the constitutional rights of the citizen depend.” (285 U. S. at pp. 56, 57.)

The Court specifically refers to cases involving proceedings in the Land Office, Boards and Commissions created by the Congress such as the Interstate Commerce Commission and cases involving the right to a trial *de novo* upon *habeas corpus* proceedings. The sum and substance of what the Court says with reference to these last mentioned matters is that if there is a condition precedent in a statute providing for administrative decision, such condition precedent must exist or the administrative body has no authority to proceed. For instance, when proceedings are taken against a person under a military law and enlistment is denied, the issue has been tried and determined *de novo* upon *habeas corpus*; in the administration of the public land system, questions of fact are for the consideration and judgment of the Land Department and its decision of such questions is conclusive, but if the lands never were public property, or had previously been disposed of, or if Congress had made no provision for their sale, or had reserved them, such matters, disclosing a want of jurisdiction, may be considered by a court of law.

As the Court said at page 59:

“This Court has held that ‘matters of this kind, disclosing a want of jurisdiction, may be considered by a court of law. In such cases the objection to the patent reaches beyond the action of the special tribunal, and goes to the existence of a subject upon which it was competent to act.’ ” (285 U. S. at p. 59.)

The Court also said at page 59:

“The question whether a publication is a ‘book’ or a ‘periodical’ has been reviewed upon the evidence received in a suit brought to restrain the Postmaster General from acting beyond his authority in excluding the publication from carriage as second-class mail matter.” (285 U. S. at p. 59.)

On page 60 of the decision the Court says:

“Jurisdiction in the Executive to order deportation exists only if the person arrested is an alien, and while, if there were jurisdiction, the findings of fact of the Executive Department would be conclusive, the claim of citizenship ‘is a denial of an essential jurisdictional fact’ both in the statutory and the constitutional sense, and a writ of *habeas corpus* will issue ‘to determine the status.’ ” (285 U. S. at p. 60.)

The Court in its opinion uses the words “fundamental or jurisdictional facts” as synonymous. The rules set forth in the *Crowell* case are clearly applicable to the case at bar. The Congress did not purport to establish liability without fault in the absence of the relation of employer and employee which was involved in the *Crowell* case. Neither did the Congress attempt to impose liability without fault on the part of the employer of a longshoreman fatally injured while performing work on navigable waters of the United States, in favor of any woman who was not the actual surviving wife of the deceased. The appellants here are not contending that the Longshoremen’s and Harbor Workers’ Compensation Act is unconstitutional in its provision that if the injury causes death, the compensation shall be payable if there be a surviving wife. Their point is that unless there is a surviving wife there is



nothing in the act which gives the deputy commissioner any power to award a death benefit any more than he could make an award if the relationship of employer and employee did not exist between a person proceeded against by a living but injured employee.

It is elementary that the Longshoremen's and Harbor Workers' Compensation Act must be considered as a whole, regardless of the fact that it is divided into sections. The "coverage" section which provides that compensation shall be payable under the chapter in respect of disability or death of an employee but only if the disability or death results from an injury occurring upon the navigable waters of the United States, must be read in conjunction with Section 909. When so read, as applied to the facts of the case at bar, the statute would appear as follows: Compensation shall be payable under this chapter in respect of the death of an employee, only if the death results from an injury occurring upon the navigable waters of the United States and only if there be a surviving wife.

If appellants have fairly epitomized the meaning of the statute then it is clear that the status of the claimant is a fundamental and jurisdictional fact and involves both statutory and constitutional jurisdictional questions.

The Supreme Court said (*Crowell v. Benson*, 285 U. S. at 54, 55):

"What has been said thus far relates to the determination of claims of employees within the purview of the Act. A different question is presented where the determinations of fact are fundamental or 'jurisdictional,' in the sense that their existence is a condition precedent to the operation of the statutory

scheme. These fundamental requirements are that the injury occurs upon the navigable waters of the United States and that the relation of master and servant exists.” (285 U. S. at pp. 54, 55.)

The last sentence in the language just quoted is seized upon by appellee in support of his contention that the only fundamental requirements as to which a trial *de novo* may be had are those with reference to the place where the injury occurred and the relationship of master and servant. Appellants’ answer to that contention is that the language used must be understood in the light of the facts and issues which were before the Court. The first sentence in the quoted matter is applicable as a matter of principle and is not restricted to the particular factual situation then before the Court. It is the appellants’ contention that the existence of the status of surviving wife is a fundamental or jurisdictional fact in the sense that its existence is a condition precedent to the operation of the statutory scheme in any case involving the death of a longshoreman.

The fact that the particular point involved in the case at bar has not had the attention of any federal court of appellate jurisdiction up to this time is of no moment for the reason that in the vast number of cases which have been processed by the United States Employees’ Compensation Commission there has never arisen a case wherein this point was present. There are likewise very few cases wherein a trial *de novo* has been claimed upon the ground that there was a dispute as to the existence of the relationship of employer and employee or the fact that the injury or death occurred upon navigable waters of the United States.

In *Cardillo v. Liberty Mutual Insurance Co.*, 330 U. S. 469, one of the cases cited by appellee, at page 474 the Court says:

“The jurisdiction of the Deputy Commissioner to consider the claim in this case rests upon the statement in the District of Columbia Act that it ‘shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term “employer” shall be held to mean every person carrying on any employment in the District of Columbia, and the term “employee” shall be held to mean every employee of any such person.’ There is no question here but that Ticer was employed by a District of Columbia employer; the latter had its place of business in the district and engaged in construction work in the district, as well as in the surrounding areas.” (330 U. S. at p. 474.)

Again, at page 477, the Court says:

“Hence we conclude that the Deputy Commissioner had jurisdiction under the District of Columbia Act to entertain a claim by a *widow* of an employee who had been a resident of the District, who had been employed by a District employer and who had been subject to work assignments in the District.” (Emphasis added.) (330 U. S. at p. 477.)

Putting these two parts of the opinion together it is quite clear that the Supreme Court determined that one of the jurisdictional facts was the actual existence of a



widow. The Court did not say that the Commissioner had the final and conclusive right to determine that the claimant in the *Cardillo* case was the widow. All the Court said was that the Deputy Commissioner had jurisdiction under the District of Columbia Act to *entertain a claim* by a *widow* of an employee, etc.

As applied to the facts in the case at bar the Deputy Commissioner had no jurisdiction to consider any claim by any woman who wasn't a surviving wife of the deceased employee.

There is nothing in the *Cardillo* case which overrules or limits the *Crowell* case. There is nothing which appellants can find in the *Cardillo* case which holds that the courts are conclusively bound by a legal conclusion of a deputy commissioner as to the existence of a legal relationship which is a condition precedent to the right to receive an award, when the facts as introduced in evidence do not conform to the requirements of the applicable law which specifies how the legal relationship may be created. In the case at bar the law which specified how the legal relationship of husband and wife could have been created between the claimant and the deceased employee is the law of Mexico and appellants are unable to understand how the Deputy Commissioner in the case at bar can be said to have had the final and conclusive right, to the exclusion of the courts, to say that the claimant was the surviving wife of the deceased regardless of the fact that her claim of marriage was not in any sense in accordance with the applicable Mexican law.

In the case of *Tyler v. Lowe*, 138 F. (2d) 867, the Second Circuit expresses no view that the rule established in *Crowell v. Benson* as to a trial *de novo* on fundamental or jurisdictional facts has been overruled or limited in any way. It refers specifically to the *Crowell* case and evidently accepted it as the law applicable to the subject. If the Second Circuit had been of the opinion that the *Crowell* case had been devitalized in any respect it would no doubt have said so.

In *Metropolitan Casualty Company v. Hoage*, 72 F. (2d) 175, 176, the Court says:

“There is no dispute as to the cause of Brown’s death. The question before us is solely the fact of employment, and, as this fact is an essential condition precedent to the right to make the claim, the proceeding in the court below was, in our opinion, entirely proper. *Crowell v. Benson*, 285 U. S. 22, 62 S. Ct. 285, 76 L. Ed. 598.” (72 F. (2d) 175, 176.)

In the *Metropolitan Casualty Company* case the District Court tried the question of employment *de novo* and the Circuit Court of Appeals approved this procedure for the reason that the fact of employment was an essential condition precedent to the right to make the claim.

II.

**The Deputy Commissioner's Finding That Claimant Is the Widow of the Deceased Employee Is Not Supported by Evidence.**

The appellee cites California statutes and cases in support of his contention that the evidence introduced before the Deputy Commissioner is legally sufficient to support what the appellee calls a finding of fact, to wit, "that Cora E. Olcott, claimant herein, . . . is the widow of the deceased employee, Walter Olcott, was married to him August 26, 1926, and was living with him as his wife and dependent upon him for support at the time of his injury." (App. Br. p. 11.)

Appellants contend that whether or not the claimant is the surviving wife of Walter Olcott must be determined solely by reference to the substantive law involved. That substantive law is the law of Mexico in full force and effect in August, 1926, and the law of the State of California, where the parties were domiciled according to the evidence, is of no importance. While it may be true that in the absence of evidence to the contrary the Commissioner might have been justified in presuming that the law of Mexico was the same as that of California in August of 1926, this presumption cannot stand in the face of uncontradicted evidence showing that the law of Mexico with reference to the essential prerequisites of a valid and legal marriage was different from those of California.

Appellee was unable to find any substantial ground upon which to criticize the evidence offered by the employer and its insurance carrier with reference to the law of Mexico or the independent investigation with reference to that law which was made by the Deputy Commissioner by let-



ters. In the final analysis the appellee's contention with reference to the Mexican law is set forth on page 18 of his brief as follows:

“However, the Mexican law and its application to the case was a question of fact to be determined by the Deputy Commissioner as the trier of fact.”

Appellee cites in support of this statement in his brief the case of *Shapleigh v. Mier*, 83 F. (2d) 673. In that case the Court said, with reference to certain Mexican laws, as follows:

“Questions as to their meaning and application were fully discussed by expert witnesses of both sides *who contradicted one another widely*. We are of opinion that the Mexican law and its application to this case was a question of fact and rightly disposed of as such by the District Judge, if he had any right to go into the question at all.” (Emphasis added.) (83 F. (2d) at pp. 676, 677.)

It thus appears that the reason the Mexican law was a question of fact was that the evidence with reference thereto was contradictory. There is no conflict in the case at bar with reference to the Mexican law. If there had been conflicting evidence in the case at bar with experts on one side testifying that the law of Mexico in effect in August, 1926, permitted persons to be married by a “preacher” then there would have been a conflict and the Deputy Commissioner would have been justified in deciding, as a question of fact, the actual Mexican law.

There was no claim made by the claimant in the proceedings before the Deputy Commissioner that she was married by proxy or that she was married in any place excepting at Tijuana, Mexico. In her Claim she stated

that she "was married to the deceased on 26th day of Aug., 1926 at Tijuana, Mexico by a Judge of the First Instance." [Ap. 58.]

It is the contention of the appellants that the mere conclusion of the claimant that she was married to Walter Olcott on August 26, 1926, at Tijuana, Mexico, and that Walter Olcott told John Roberts that "we got married by a preacher" is not legally sufficient to prove a legal marriage in spite of the fact that from and after August 26, 1926, the two persons lived together in San Diego County as husband and wife. The presumptions which are contained in the California Code of Civil Procedure relate to procedural matters only, to wit, evidence. This section of the California Code of Civil Procedure is not in any sense substantive proof. The appellants cited cases in their opening brief with reference to the lack of probative effect of a presumption in a federal court when there is any substantial evidence to rebut the presumption and appellee makes no attempt to reply to the argument or the authorities. (See App. Op. Br. p. 20.)

If we compare what the claimant and her witness John Roberts testified to before the Deputy Commissioner with the requirements of the Mexican law, it is obvious that there never was any marriage. The appellee refers, on page 18 of his brief, to what he evidently concedes was part of the Mexican law governing family relations which was in effect in 1926 for the Federal District and Territory of Lower California in which Tijuana is located. Article 3 of that law provides as follows:

"On the day and hour *designated* for the performance of the marriage, there must be present before the *Civil Judge*, at the place the *latter* may have determined upon, the parties thereto, in person or through a special representative legitimately ap-

pointed, and in addition two witnesses for each one of the parties themselves, to vouch for their identity, as well as the parents or guardians of the parties, if any, and if they should desire to attend the ceremony.  
\* \* \*” [Ap. 172.]

The claimant testified that she was married by a preacher. [Ap. 9.] Therefore, she wasn't present before any Civil Judge. She also testified that she did not know anyone else who was present at the purported marriage excepting Walter Olcott. Therefore, she did not have two witnesses to vouch for her identity.

This provision of the Mexican law is corroborative of the testimony of the witness Jesus Ruiz who said in this respect as follows:

“\* \* \* the petition is filed; the judge calls on each of the persons who have signed an application, one at a time, in order that they may say whether or not that which is written is true. When the applications are presented to the judge, he calls them all in to ratify it. Then after ratifying the application *he* fixes a time within eight days, and then when they are all present *again* he asks those who are to be married if they ratify their applications still, and if they still wish to be married, he then declares them to be married in the name of the law and in the name of society, and all that procedure is thereupon recorded in a book.” (Emphasis added.) [Ap. 26.]

It is clear from Article 3 of the Mexican law set forth in the letter from the Embassy of the United States of America at Mexico City to the Deputy Commissioner that persons could not appear before the Judge on a single occasion and be lawfully married. It is also clear from Article 3 of the Mexican law, governing family relations,



*supra*, that the day and hour for the performance of a marriage is designated in advance of the actual performance of the marriage. This dovetails with the testimony of Ruiz with reference to the requirement of two separate appearances.

Appellee is significantly silent with reference to the letters written by the Deputy Commissioner to Senor Ballestero, who was connected with the Consulate of Mexico, and the answers received by the Deputy Commissioner from Senor Ballestero. [Ap. 158-164, 167, 168, 173, 174.]

In answer to the first letter written by the Deputy Commissioner with reference to the possibility of a marriage between claimant and Walter Olcott in the absence of a record, Senor Ballestero said:

“\* \* \* from the information stated above, it is impossible that Mr. and Mrs. Olcott were validly married at Tijuana. The Civil Register Offices have been in existence in Tijuana and instituted since 1914, and in this particular case, the records having not been destroyed or effaced, and since none of the leaves are missing on which it might be supposed the record was made, and since therefore, no proof of the fact or act by means of instruments or witnesses may be received; and there being a duplicate book of the register which does not contain any record of such marriage, *it is impossible that Mr. and Mrs. Olcott could have been legally or colorably married in Tijuana.* They might have appeared before some person, but without any authority to perform marriages.” [Ap. 163.]

There was plenty of opportunity for the claimant to have disputed the evidence with reference to the Mexican

law in the event she had any ground upon which she could have refuted the testimony of the witness Ruiz, the opinions of Senor Ballesteros or the statements made in the other correspondence conducted by the Deputy Commissioner with the Embassy of the United States of America at Mexico City. She offered no such proof.

Appellants refer particularly to the letter dated January 17, 1946, from the Embassy of the United States of America at Mexico City wherein was included a translation of Article 157 of the Mexican Civil Code which provides that "marriages may be performed before the *officials* stipulated in the law, and with all the *formalities* therein required." (Emphasis added.) [Ap. 171.]

In the testimony of Mr. Ruiz he stated as follows:

"Since 1884 up to date neither a priest nor minister of the gospel could perform a marriage in Lower California." [Ap. 11.]

This is in accordance with the provisions in Article 157 of the Mexican Civil Code which, as is set forth in the letter from the Embassy of the United States of America, *supra*, was issued on March 31, 1884.

It therefore appears clear that legal marriages in Mexico could not have been performed by anyone but an official stipulated in the law and with all the formalities therein required. This would exclude a preacher. The letter from the Embassy also corroborates Mr. Ruiz' testimony that "there was no such thing as a religious marriage. That is prohibited." [Ap. 11.]

In conclusion with reference to this point appellants contend that there is no basis in the record for any contention that there was any oral testimony as to the solemnization of a marriage. The mere statement of a conclusion by the claimant that she was married does not amount to

testimony of the solemnization of a marriage. In other words, if a person testified that "I was married in California by a Supervisor of the city and county of San Francisco on January 2, 1942," such testimony would not rise to the dignity of testimony as to the solemnization of a marriage. In the first place, a Supervisor has no lawful authority to marry anybody and that would seem to put an end to the matter. In the second place, the mere statement "I was married" is not testimony which shows even an attempt to prove the solemnization of a marriage. Appellants' idea of oral testimony which might amount to proof of the solemnization of a marriage is that the ceremony be described by showing where the ceremony occurred, who was present, and the circumstances of all that was said and done by the persons taking part in the ceremony and the person who was conducting the ceremony.

It also seems very strange that a woman is unable to tell where she was married, if in fact she was married. Even a man would remember such an important fact as a marriage and would know where it occurred and what happened and who performed the marriage. The claimant in this case wasn't able to answer any of these questions when she consulted Mr. Ruiz. He testified as follows:

"I also asked the lady if she remembered in what building she had been married, and if it was on the lower floor or upstairs. She could not explain to me how she got married." [Ap. 39, 40.]

There is no doubt about the fact that Mr. Pillsbury was very sympathetic with the claimant. This is demonstrated by the things he said during the hearing and which are set forth in the Apostles and the letters which he wrote in an evident attempt to bolster the claimant's case.



III.

**Appellants Have Been Deprived of Their Property Without Due Process of Law.**

Appellee objects to a consideration of the contention of appellants that the manner in which the Deputy Commissioner conducted the hearing deprived them of their property without due process of law for the reason that there was no allegation in the libel raising that point.

In the District Court the appellee filed a Motion for Summary Judgment. Appellants filed a Memorandum of Points and Authorities in opposition to this motion and in Point Number 3 contended that "the proceedings before the deputy commissioner were in contravention of the due process clause of the 5th Amendment, U. S. Constitution." [Ap. 206.]

Thereafter the appellants incorporated the foregoing point in their Opening Brief on the merits. [Ap. 218.] Appellee filed his answering brief in which he said:

"Since libelants and respondent in their respective briefs, which were submitted upon the motion for summary judgment, discussed fully the law and the facts relating to this case, respondent, like the libelants, incorporates herein by reference thereto the memorandum submitted by respondent in support of the motion for summary judgment." [Ap. 221.]

It thus appears from the record that the question whether or not the appellants were deprived of their property without due process of law in so far as the action of the Deputy Commissioner was concerned was regarded as an issue and it is too late for the appellee at this date to claim otherwise. Having conceded in the trial court that

the issue was in the case, appellee is estopped to dispute that fact at this time. If any objection had been made upon the ground that the constitutional point was not pleaded it could have been cured easily by an amendment to the libel.

The foregoing has nothing to do with the contention of the appellants that the rulings of the District Court were and each thereof was in contravention of the Fifth Amendment to the Constitution of the United States. There is no requirement that a constitutional point arising from the action of a trial court be set forth in a pleading.

### Conclusion.

It is respectfully contended that appellants have fully answered the arguments of appellee and that appellants are entitled to affirmative relief as prayed in the conclusion to their Opening Brief.

Respectfully submitted,

LASHER B. GALLAGHER,

*Proctor for Appellants.*





No. 11904

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

---

EDNA D. HEATH, Executrix of the Last Will of  
FRED W. HEATH, Deceased, and MYRA C.  
KNAPP, Executrix of the Last Will of DANIEL  
A. KNAPP, Deceased,

Appellants.

vs.

JOHN N. HELMICK, Trustee of the Estate of ME-  
LANIE DOUILLARD WOODD, Bankrupt,

Appellee.

---

## TRANSCRIPT OF RECORD

(In Two Volumes)

VOLUME I

(Pages 1 to 256, Inclusive)

Upon Appeal From the District Court of the United States  
for the Southern District of California

Central Division

---

**FILED**

JUL 16 1948

PAUL R. O'BRIEN,



**No. 11904**

IN THE

**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT

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EDNA D. HEATH, Executrix of the Last Will of  
FRED W. HEATH, Deceased, and MYRA C.  
KNAPP, Executrix of the Last Will of DANIEL  
A. KNAPP, Deceased,

Appellants.

vs.

JOHN N. HELMICK, Trustee of the Estate of ME-  
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NAMES AND ADDRESSES OF ATTORNEYS:

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and

J. GEO. OHANNESON

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Los Angeles 15, Calif.

For Appellee:

LESLIE S. BOWDEN and

J. N. CLEMENTS

548 South Spring Street

Los Angeles 13, Calif. [1\*]

In the District Court of the United States for the  
Southern District of California  
Central Division

In Bankruptcy No. 44032-B

In the Matter of

MELANIE DOUILLARD WOODD,

Bankrupt.

### DEBTOR'S PETITION

To the Honorable, \_\_\_\_\_, Judge of  
the District Court of the United States for the  
Southern District of California:

The Petition of Melanie Douillard Woodd, residing at  
No. 5255 Virginia Avenue, in the City and County of  
Los Angeles, State of California, by occupation a sales-  
woman, and employed by Fifth Street Department Store  
(or engaged in the business of \_\_\_\_\_),  
respectfully represents:

1. Your petitioner has had her principal place of  
business (or has resided, or has had her domicile) at  
5255 Virginia Avenue, Los Angeles, California, within  
the above judicial district, for a longer portion of the  
six months immediately preceding the filing of this peti-  
tion than in any other judicial district.

2. Your petitioner owes debts and is willing to sur-  
render all her property for the benefit of her creditors,  
except such as is exempt by law, and desires to obtain the  
benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A,  
and verified by your petitioner's oath, contains a full and  
true statement of all her debts, and, so far as it is possible

to ascertain, the names and places of residence of her creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all her property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that she may be adjudged by the court to be a bankrupt within the purview of said Act.

MELANIE DOUILLARD-WOODD

petitioner

EARL F. CRANDELL

Attorney for Petitioner

[Verified.]

[Endorsed]: Filed Aug. 29, 1945. Edmund L. Smith,  
Clerk. [2]

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### SCHEDULE A-3

#### Creditors Whose Claims Are Unsecured

(N. B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)



Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—When and where contracted.—Whether claim is contingent, unliquidated or disputed.—Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom.

Superior Court Action No. 435718, Robert E. Austin, Thomas Higgins, Jr., and J. M. Clements, attorneys, Los Angeles Stock Exchange Building.

	Amount due or Claimed. Dollars Cents
Judgments in favor of Emile A. Douillard	\$2,500.00
Judgment in favor of Frank T. Douillard	2,500.00
Judgment in favor of Raymond F. Puissegur	1,250.00
Judgment in favor of Juliette Evans	1,250.00

Superior Court Action No. 450821, Daniel A. Knapp & Fred W. Heath, attorneys, Black Building.

Judgment in favor of M. L. Hovey	\$4,000.00
Total	<hr/> \$11,500.00

Melanie Douillard-Woodd  
Petitioner

[Endorsed]: Filed Aug. 29, 1945. Edmund L. Smith,  
Clerk. [3]

UNITED STATES DISTRICT COURT  
Southern District of California

ORDERS OF ADJUDICATION AND OF  
GENERAL REFERENCE

At Los Angeles, in said District, on August 29, 1945.

The respective petitions of each of the petitioners in the proceedings hereinafter mentioned, filed on the respective dates hereinafter indicated, that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and there being no opposition thereto;

It is adjudged that each of said petitioners is a bankrupt under the Act of Congress relating to bankruptcy; and

It is thereupon ordered that the said proceedings be, and they hereby are, referred generally to the referee in bankruptcy of this Court, whose name appears opposite the respective proceedings hereinafter mentioned, to take such further proceedings therein as are required and permitted by said Act, and that each of the said bankrupts shall henceforth attend before said referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

Number 44,032-B Title of Proceedings Melanie Douillard Woodd Filed 8/29/45 Referee Hubert F. Laugharn, Esq., Los Angeles, Calif.

DAVE W. LING

United States District Judge

[Endorsed]: Filed Aug. 29, 1945. Edmund L. Smith, Clerk. [4]

[Title of District Court and Cause]

PROOF OF CLAIM IN BANKRUPTCY AND  
POWER OF ATTORNEY

United States of America,  
Southern District of California  
Central Division—ss.

At Los Angeles, in the above district, on the date  
set forth in the notarial acknowledgment hereto, came  
Emile A. Douillard, who being sworn, says:

I.

(A) Individual

(A) That he is the claimant hereinafter designated.

(B) Partnership

(B) That affiant is a member of the ~~co-partnership~~  
trading as ....., hereinafter  
designated as claimants, consisting of himself  
and .....

That said affiant has subscribed the partnership  
name and is duly authorized by said firm to  
make, execute and acknowledge this Proof and  
Claim and Power of Attorney.

(C) Corporation

(C) That affiant is:

(1) Treasurer of claimant corporation, and an of-  
ficer thereof duly authorized to execute this  
Proof of Claim and Power of Attorney.



(2) The officer of claimer corporation whose duties most nearly correspond with that of Treasurer, to wit.....and duly authorized to make this Proof and Power and that there is no such office as that of treasurer of said corporation.

(3) Familiar with all the facts and circumstances concerning said claim, in possession of the books of account of said corporation, the person most familiar with this account, and duly authorized to execute this proof of claim and power of attorney; and that this deposition cannot be made by the Treasurer in person because said corporation has no treasurer in the State of California.

## II.

That the above named bankrupt was at and before the time of filing of the petition in bankruptcy herein and still is justly and truly indebted to said claimant in the sum of \$1,768.95. That the consideration of said debt is Judgment rendered in the Superior Court of the State of California, in and for the County of Los Angeles in case No. 435718, entered April 25, 1940, in the sum of \$2500.00, together with interest. Credit \$1500.00 May 15, 1943. A copy of said Judgment is hereto attached, as Exhibit "A". That said amount set forth in said Exhibit "A" is justly due and owing. That no part thereof has been paid. That there are no offsets or counterclaims thereto. That deponent has not nor has any person for or on behalf of said claimant, or to this deponent's knowl-

edge or belief, for the use or benefit of said claimant had or received any security for said debt whatever. That no judgment has been rendered therefor or any part thereof, nor has any note or other evidence of said debt been received except such note or evidence of said debt, if any, as is attached to this document.

### III.

Said claimant hereby appoints J. M. Clements and Robert E. Austin, attorneys in fact, with full power of substitution, authorizing them or either of them to attend any and all meetings of creditors or adjourned meetings of creditors of the bankrupt in any court of bankruptcy or before any referee in bankruptcy or elsewhere and for said claimant and in the name of said claimant to vote for or against any proposal or resolution that may be submitted in reference to the estate of the above-named bankrupt and in the choice of Trustee or Trustees. To accept or refuse any composition in or out of bankruptcy proposed by said bankrupt. To receive and collect any payment of dividends or fees or moneys due said claimant under any composition or otherwise and in general to take such action, and do such acts, execute such consents and documents for such claimant as said attorneys in fact may deem best, as fully as such claimant could do if personally present, and said claimant hereby revokes all other powers of attorney by him given herein.

EMILE A. DOUILLARD

~~Treasurer, Partner or Individual~~

NOTARIAL ACKNOWLEDGMENT

United States of America  
State of California  
County of Los Angeles—ss.

On Sept. 14, 1945, before me appeared the above named affiant and subscriber to me personally known, who being duly sworn did say that he is

- (A) the claimant herein,
- (B) a member of the partnership above named, duly authorized to execute on behalf of claimant,
- (C) an officer of the corporation above named duly authorized to execute on behalf of said corporation the foregoing Proof of Claim and Power of Attorney and acknowledged the execution of the foregoing on behalf of said claimant.

Subscribed and sworn to before me, and acknowledged by the subscriber on behalf of claimant.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, the day and year in my certificate above written.

(Seal) ROBERT E. AUSTIN

Notary Public in and for the County of Los Angeles,  
State of California

Attach copies of invoices or original notes. Mere Statements are not sufficient.

If a corporation the treasurer must sign if it has one. [5]

[Verified.]



## EXHIBIT "A"

In the Superior Court of the State of California in and  
for the County of Los Angeles

No. 435718

Emile A. Douillard, Frank T. Douillard, Raymond F.  
Puissegur, Juliette Evans, Plaintiffs, v. Melanie D.  
Woodd, Defendant.

## JUDGMENT

The above cause came on to be heard before the Honorable Thurmond Clarke, judge of the above entitled Court, sitting without a jury in Department 6 of the above court on the 30th day of January, 1940, and the plaintiffs having appeared and being represented by their attorneys, Thomas Higgins, Jr. and J. M. Clements, and defendant having appeared and being represented by her attorneys, Fred W. Heath and Daniel A. Knapp, and the cause having been submitted to the Court for decision on March 18, 1940, and the Court having made its findings of fact and conclusions of law,

It Is Hereby Ordered, Adjudged, and Decreed that the plaintiffs have judgment against the defendant as follows:

That the plaintiff, Emile A. Douillard, do have and recover from the defendant, Melanie D. Woodd, the sum of \$2500. That the plaintiff, Frank T. Douillard, do have and recover from the defendant the sum of \$2500. That the plaintiff, Raymond F. Puissegur, do have and recover from the defendant, the sum of \$1250. That the plaintiff, Juliette Evans, do have and recover from the defendant, the sum of \$1250, and the defendants do have

and recover from the plaintiffs their costs of suit in the sum of \$.....

Let judgment be entered accordingly:

Dated ....., 1940.

.....  
Judge

[Endorsed]: Filed Sep. 17, 1945. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Sep. 16, 1946. Edmund L. Smith, Clerk. [6]

\_\_\_\_\_  
[Title of District Court and Cause]

PROOF OF CLAIM IN BANKRUPTCY AND  
POWER OF ATTORNEY

United States of America,  
Southern District of California  
Central Division—ss.

At Los Angeles, in the above district, on the date set forth in the notarial acknowledgment hereto, came Frank T. Douillard, who being sworn, says:

I.

(A) Individual

(A) That he is the claimant hereinafter designated.

(B) Partnership

\* \* \* \* \*

(C) Corporation

\* \* \* \* \*

## II.

That the above named bankrupt was at and before the time of filing of the petition in bankruptcy herein and still is justly and truly indebted to said claimant in the sum of \$3,443.05. That the consideration of said debt is Judgment rendered in the Superior Court of the State of California, in and for the County of Los Angeles in case No. 435718, entered April 25, 1940, in the sum of \$2500.00, together with interest from April 25, 1940 to Sept. 14, 1945 at 7%, amounting to \$943.05. A copy of said Judgment is attached hereto, marked Exhibit "A". That said amount set forth is justly due and owing. That no part thereof has been paid. That there are no offsets or counterclaims thereto. That deponent has not nor has any person for or on behalf of said claimant, or to this deponent's knowledge or belief, for the use or benefit of said claimant had or received any security for said debt whatever. That no judgment has been rendered therefor or any part thereof, nor has any note or other evidence of said debt been received except such note or evidence of said debt, if any, as is attached to this document.

## III.

Said claimant hereby appoints J. M. Clements and Robert E. Austin, attorneys in fact, with full power of substitution, authorizing them or either of them to attend any and all meetings of creditors or adjourned meetings of creditors of the bankrupt in any court of bankruptcy or before any referee in bankruptcy or elsewhere and for said claimant and in the name of said claimant to vote for or against any proposal or resolution that may be submitted in reference to the estate of the above-named bankrupt and in the choice of Trustee or Trustees. To accept or refuse any composition in or out of bank-



ruptcy proposed by said bankrupt. To receive and collect any payment of dividends or fees or moneys due said claimant under any composition or otherwise and in general to take such action, and do such acts, execute such consents and documents for such claimant as said attorneys in fact may deem best, as fully as such claimant could do if personally present, and said claimant hereby revokes all other powers of attorney by him given herein.

FRANK T. DOUILLARD

~~Treasurer, Partner or~~ Individual

NOTARIAL ACKNOWLEDGMENT

United States of America

State of California

County of Los Angeles—ss.

On Sept. 14, 1945, before me appeared the above named affiant and subscriber to me personally known, who being duly sworn did say that he is

- (A) the claimant herein,
- (B) a member of the partnership above named, duly authorized to execute on behalf of claimant,
- (C) an officer of the corporation above named duly authorized to execute on behalf of said corporation the foregoing Proof of Claim and Power of Attorney and acknowledged the execution of the foregoing on behalf of said claimant.

Subscribed and sworn to before me, and acknowledged by the subscriber on behalf of claimant.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, the day and year in my certificate above written.

(Seal)

ROBERT E. AUSTIN

Notary Public in and for the County of Los Angeles,  
State of California

Attach copies of invoices or original notes. Mere Statements are not sufficient.

If a corporation the treasurer must sign if it has one. [7]

[Verified.]

### EXHIBIT "A"

\* \* \* \* \*

[Note: Exhibit "A" attached hereto is a judgment and is identical to Exhibit "A" appearing at pages 10 and 11 of this Transcript and is therefore not reproduced at this point.]

[Endorsed]: Filed Sep. 17, 1945. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Sep. 16, 1946. Edmund L. Smith, Clerk. [8]

[Title of District Court and Cause]

PROOF OF CLAIM IN BANKRUPTCY AND  
POWER OF ATTORNEY

United States of America,  
Southern District of California  
Central Division—ss.

At Los Angeles, in the above district, on the date  
set forth in the notarial acknowledgment hereto, came  
Juliette Evans, who being sworn, says:

I.

(A) Individual

(A) That she is the claimant hereinafter designated.

(B) Partnership

\* \* \* \* \*

(C) Corporation

\* \* \* \* \*

II.

That the above named bankrupt was at and before the  
time of filing of the petition in bankruptcy herein and  
still is justly and truly indebted to said claimant in the  
sum of \$1,721.52. That the consideration of said debt  
is Judgment rendered in the Superior Court of the State  
of California, in and for the County of Los Angeles in  
case No. 435718, entered April 25, 1940, in the sum of  
\$1250.00, together with interest from April 25, 1940  
to September 14, 1945 at 7%, amounting to \$471.52. A  
copy of said Judgment is attached hereto marked Exhibit  
“A”. That said amount set forth is justly due and owing.  
That no part thereof has been paid. That there are no



offsets or counterclaims thereto. That deponent has not nor has any person for or on behalf of said claimant, or to this deponent's knowledge or belief, for the use or benefit of said claimant had or received any security for said debt whatever. That no judgment has been rendered therefor or any part thereof, nor has any note or other evidence of said debt been received except such note or evidence of said debt, if any, as is attached to this document.

### III.

Said claimant hereby appoints J. M. Clements and Robert E. Austin, attorneys in fact, with full power of substitution, authorizing them or either of them to attend any and all meetings of creditors or adjourned meetings of creditors of the bankrupt in any court of bankruptcy or before any referee in bankruptcy or elsewhere and for said claimant and in the name of said claimant to vote for or against any proposal or resolution that may be submitted in reference to the estate of the above-named bankrupt and in the choice of Trustee or Trustees. To accept or refuse any composition in or out of bankruptcy proposed by said bankrupt. To receive and collect any payment of dividends or fees or moneys due said claimant under any composition or otherwise and in general to take such action, and do such acts, execute such consents and documents for such claimant as said attorneys in fact may deem best, as fully as such claimant could do if personally present, and said claimant hereby revokes all other powers of attorney by him given herein.

JULIETTE EVANS

~~Treasurer, Partner or Individual~~

NOTARIAL ACKNOWLEDGMENT

United States of America  
State of California  
County of Los Angeles—ss.

On Sept. 14, 1945, before me appeared the above named affiant and subscriber to me personally known, who being duly sworn did say that he is

- (A) the claimant herein,
- (B) ~~a member of the partnership above named, duly authorized to execute on behalf of claimant,~~
- (C) ~~an officer of the corporation above named duly authorized to execute on behalf of said corporation the foregoing Proof of Claim and Power of Attorney and acknowledged the execution of the foregoing on behalf of said claimant.~~

Subscribed and sworn to before me, and acknowledged by the subscriber on behalf of claimant.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, the day and year in my certificate above written.

(Seal) ROBERT E. AUSTIN

Notary Public in and for the County of Los Angeles,  
State of California

Attach copies of invoices or original notes. Mere Statements are not sufficient.

If a corporation the treasurer must sign if it has one. [9]

[Verified.]

EXHIBIT "A"

\* \* \* \* \*

[Note: Exhibit "A" attached hereto is a judgment and is identical to Exhibit "A" appearing at pages 10 and 11 of this Transcript and is therefore not reproduced at this point.]

[Endorsed]: Filed Sep. 17, 1945. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Sep. 16, 1946. Edmund L. Smith, Clerk. [10]

[Title of District Court and Cause]

PROOF OF CLAIM IN BANKRUPTCY AND  
POWER OF ATTORNEY

United States of America,  
Southern District of California  
Central Division—ss.

At Los Angeles, in the above district, on the date set forth in the notarial acknowledgment hereto, came Raymond F. Puissegur, who being sworn, says:

I.

(A) Individual

(A) That he is the claimant hereinafter designated.

(B) Partnership

\* \* \* \* \*

(C) Corporation

\* \* \* \* \*



## II.

That the above named bankrupt was at and before the time of filing of the petition in bankruptcy herein and still is justly and truly indebted to said claimant in the sum of \$862.73. That the consideration of said debt is Judgment rendered in the Superior Court of the State of California, in and for the County of Los Angeles in case No. 435718, entered April 25, 1940, in the sum of \$1250.00, together with interest. Credit \$650.00 October 17, 1940. A copy of said Judgment is hereto attached as Exhibit "A". That said amount set forth in said Exhibit "A" is justly due and owing. That no part thereof has been paid. That there are no offsets or counterclaims thereto. That deponent has not nor has any person for or on behalf of said claimant, or to this deponent's knowledge or belief, for the use or benefit of said claimant had or received any security for said debt whatever. That no judgment has been rendered therefor or any part thereof, nor has any note or other evidence of said debt been received except such note or evidence of said debt, if any, as is attached to this document.

## III.

Said claimant hereby appoints J. M. Clements and Robert E. Austin, attorneys in fact, with full power of substitution, authorizing them or either of them to attend any and all meetings of creditors or adjourned meetings of creditors of the bankrupt in any court of bankruptcy or before any referee in bankruptcy or elsewhere and for said claimant and in the name of said claimant to vote for or against any proposal or resolution that may be submitted in reference to the estate of the above-named bankrupt and in the choice of Trustee or Trustees. To

accept or refuse any composition in or out of bankruptcy proposed by said bankrupt. To receive and collect any payment of dividends or fees or moneys due said claimant under any composition or otherwise and in general to take such action, and do such acts, execute such consents and documents for such claimant as said attorneys in fact may deem best, as fully as such claimant could do if personally present, and said claimant hereby revokes all other powers of attorney by him given herein.

RAYMOND F. PUISSEGUR

~~Treasurer, Partner or~~ Individual

## NOTARIAL ACKNOWLEDGMENT

United States of America

State of California

County of Los Angeles—ss.

On Sept. 14, 1945, before me appeared the above named affiant and subscriber to me personally known, who being duly sworn did say that he is

- (A) the claimant herein,
- (B) a member of the partnership above named, duly authorized to execute on behalf of claimant,
- (C) an officer of the corporation above named duly authorized to execute on behalf of said corporation the foregoing Proof of Claim and Power of Attorney and acknowledged the execution of the foregoing on behalf of said claimant.

Subscribed and sworn to before me, and acknowledged by the subscriber on behalf of claimant.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, the day and year in my certificate above written.

(Seal)

ROBERT E. AUSTIN

Notary Public in and for the County of Los Angeles,  
State of California

Attach copies of invoices or original notes. Mere Statements are not sufficient.

If a corporation the treasurer must sign if it has one. [11]

[Verified.]

### EXHIBIT "A"

\* \* \* \* \*

[Note: Exhibit "A" attached hereto is a judgment and is identical to Exhibit "A" appearing at pages 10 and 11 of this Transcript and is therefore not reproduced at this point.]

[Endorsed]: Filed Sep. 17, 1945. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Sep. 16, 1946. Edmund L. Smith, Clerk. [12]



[Title of District Court and Cause]

## REFEREE'S CERTIFICATE ON REVIEW

To the Honorable Campbell E. Beaumont, Judge of the United States District Court for the Southern District of California, Central Division:

I, Hubert F. Laugharn, to whom the within proceeding has been referred, as Referee hereby certify as follows:

On April 26, 1947, I made an Order Revoking the discharge of the bankrupt and on May 3, 1947, I made an Order that certain real property of record in the name of the bankrupt was an asset of the bankrupt estate.

The bankrupt has filed a Petition for Review of the Order Revoking her discharge and she has also filed a Petition for Review of the Order of May 3, 1947, pertaining to the real property.

Edna D. Heath, as Executrix of the last will of Frederick W. Heath, deceased, and Daniel A. Knapp, have filed their joint Petition to Review the Order of May 3, 1947.

The proceedings were tried together upon the same evidence and for the convenience of the Judge and also the parties, I am combining the Certificates of Review.

The questions presented are:

Should the discharge to the bankrupt be set aside and [13] revoked under Section 15 of the Bankruptcy Act?

And, is the real property which now stands of record in the name of the bankrupt, an asset of the bankrupt estate?

At the conclusion of the extended trial I prepared and filed herein a memorandum opinion, dated March 13, 1947, the same is appended hereto as my summary of the evidence, and reference is made thereto and I will not take the space here to reiterate the statements therein contained.

The case is replete with inconsistencies. The bankrupt claims that the real property which is worth many thousands of dollars, is her own property and not an asset of her bankrupt estate. She re-acquired, from her nephew, title to it without any consideration, a few days after I originally closed her former bankruptcy proceeding. Her nephew gave Mr. Hovey \$500.00 for the title.

This amount I held was actually paid to Mr. Hovey as his trustee's fees for holding the title to the property for Knapp and Heath, former attorneys for the bankrupt, until, under an agreement, the amounts owing them were paid. Upon payment of Mr. Hovey's trustees' fees (the agreed amounts having been paid to the attorneys), Mr. Hovey released the property.

The testimony of Hovey, Douillard and the bankrupt was so inconsistent and contradictory as to cause the Referee to doubt even their simplest declarations. Their manner and disposition on the witness stand further confirmed their evasive actions throughout the hearings. It was only through providential chance that the fraud of the bankrupt was discovered by the creditors and the former trustee.

In compliance with the provisions of Section 39a(8),  
I attach to this Certificate the following:

- (1) Order Revoking Discharge.
- (2) Memorandum Opinion and Direction to Prepare Findings of Fact and Orders. [14]
- (3) Findings of Fact and Order re Real Property, dated May 3, 1947.
- (4) Petition of the bankrupt for Review of Order Revoking Discharge of April 26, 1947.
- (5) Petition of the bankrupt for Review of Findings of Fact and Order made May 3, 1947, vesting Real Property.
- (6) Petition by Edna D. Heath as Executrix of last will of Frederick W. Heath, deceased, and Daniel A. Knapp, for Review of Referee's Order of May 3, 1947.
- (7) Transcripts: Volumes I to IV inclusive.
- (8) Exhibits:  
Respondent: Exhibits 1, 2, 3.  
Trustee's: Exhibits 1, 2, 3, and 4.  
Bankrupt's Exhibit A.

Dated: June 18, 1947.

Respectfully submitted,

HUBERT F. LAUGHARN

Referee in Bankruptcy

[Endorsed]: Filed Jun. 18, 1947. Edmund L. Smith,  
Clerk. [15]



[Title of District Court and Cause]

REFEREE'S SUPPLEMENTAL CERTIFICATE ON  
REVIEW

To the Honorable Judges of the Above Entitled Court:

I, David B. Head, Referee in Bankruptcy, hereby supplement the Referee's Certificate on Review heretofore filed in the above entitled matter, by adding thereto the following documents, to-wit:

1. Petition to reopen estate, dated December 4, 1946.
2. Order reopening estate, dated December 4, 1946.
3. Answer of Edna D. Heath as Executrix of Last Will of Fred W. Heath, deceased, and Daniel A. Knapp to order to show cause and petition, filed January 16, 1947.
4. Objections to findings of fact by Daniel A. Knapp and Edna D. Heath as Executrix of the Last Will of Fred W. Heath, deceased.
5. The following exhibits:

Date Rec'd. No. Description

Trustee's

10/3/45	1	Photostatic copy of signature card of bankrupt's term account [23] at Security Bank, also ledger card.
4/5/46	1	Statement of Estate of Emily S. Donahue, Dec.
"	2	Receipt of Melanie D. Woodd from Estate of Emily S. Donahue, Dec.

- |          |   |  |
|----------|---|--|
| 12/23/46 | 3 | Photostat copies of escrow, instructions, checks, etc. 1-2905-D.   |
| 1/2/48   | 1 | Photostatic copy of Letter from Fred W. Heath to Edna D. Heath, dated April 22, 1943 (Will).                 |
| 2/6/48   | 1 | Photostatic copy of Grant Deed M. L. Hovey and Anna Hovey to Fred W. Heath.                                  |
|          |   | Bankrupt's   |
| 4/5/46   | 1 | Findings of Fact and Conclusions of law dated Apr. 1944. Douillard v. Smith et al No. 486331 Superior Court. |

Dated this 12 day of April, 1948.

DAVID B. HEAD

Referee in Bankruptcy

[Endorsed]: Filed Apr. 12, 1948. Edmund L. Smith, Clerk. [24]

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[Title of District Court and Cause]

### PETITION FOR ORDER TO SHOW CAUSE

The petition of John N. Helmick, respectfully shows:

#### I.

That he is the duly appointed, qualified and acting Trustee of the above named bankrupt.

#### II.

That part of the assets belonging to this estate consist of a certain piece of real property located in the City of Los Angeles, County of Los Angeles, State of California, and described as follows:

The South 108 feet of Lot 8 of the Zahn Tract, in the City of Los Angeles, as per map recorded in Book 12, Page 127 of Maps, in the office of the County Recorder of said County.

### III.

That your petitioner is informed and believes and therefore alleges that Security-First Nat'l Bank of Los Angeles, [29] Sixth & Spring Street branch, claim a lien on said property by virtue of a Trust Deed executed to secure a certain indebtedness the exact amount due thereon, and the validity of said lien being at this time unknown to your petitioner.

### IV.

That Edna D. Heath, is the duly appointed, acting and qualified executrix of the estate of Fred W. Heath, deceased.

### V.

That M. L. Hovey, Anna L. Hovey, Louis Alfred Douillard, Sr., Edna D. Heath, as executrix of the estate of Fred W. Heath, deceased, Daniel A. Knapp, and Melanie D. Woodd, the bankrupt herein, claim an interest in and to said real property, which your petitioner alleges to be without foundation and void.

Wherefore your petitioner prays that an Order to Show Cause issue out of the above entitled Court, ordering and directing the Respondents herein to show cause if any they have on a day certain why their claims and each of them should not be adjudged to be void as against said real property, and for an Order declaring said real property to be an asset of this bankrupt estate.

JOHN L. HELMICK  
Trustee



LESLIE S. BOWDEN and J. M. CLEMENTS

By Leslie S. Bowden

Attorneys for Trustee [30]

[Verified.]

[Endorsed]: Filed Jun. 18, 1947. Edmund L. Smith,  
Clerk. [31]

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[Title of District Court and Cause]

## ORDER TO SHOW CAUSE

Upon reading and filing the verified petition of John N. Helmick, Trustee of the estate of the above named bankrupt for an Order adjudging certain liens against the real property described in the petition to be void, and good cause appearing therefor:

It is Hereby Ordered that Security-First Nat'l Bank of Los Angeles, M. L. Hovey, Anna L. Hovey, Louis Alfred Douillard, Sr., Edna D. Heath, as executrix of the estate of Fred W. Heath, deceased, Daniel A. Knapp, and Melanie D. Woodd, the bankrupt herein, be and appear before the undersigned Referee in Bankruptcy, at Room 343 Federal Building, at Los Angeles, California, on the 20 day of January, 1947, at the hour of 10 A. M. thereof, then and there to show cause why the prayer of the Trustee's petition should not be granted.

Dated: Los Angeles, Calif., this 31 day of December, 1946.

HUBERT F. LAUGHARN

Referee in Bankruptcy

[Endorsed]: Filed Dec. 31, 1946. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jun. 18, 1947. Edmund L. Smith,  
Clerk. [32]

[Title of District Court and Cause]

ANSWER OF EDNA D. HEATH, AS EXECUTRIX  
OF THE ESTATE OF FRED W. HEATH, DE-  
CEASED, AND DANIEL A. KNAPP TO ORDER  
TO SHOW CAUSE AND PETITION

Come now Edna D. Heath, as Executrix of the Estate of Fred W. Heath, Deceased, and Daniel A. Knapp, and by way of answering the petition and order to show cause filed December 31st, 1946, deny, allege and admit as follows:

I.

Deny that any liens attach to the real property described in the said petition for order to show cause in favor of the creditors of the above named bankrupt.

II.

Allege that at all times mentioned herein the said Daniel A. Knapp and Fred W. Heath during his lifetime were attorneys at law, duly licensed to practice law in the State of California, having offices in the City of Los Angeles, County of Los Angeles, State of California. [33]

III.

Allege that Fred W. Heath had for many years prior to April 10, 1940 been the attorney for the said Melanie D. Woodd in many matters, inclusive of an action entitled "Emile A. Douillard et al., Plaintiffs, vs. Melanie D. Woodd, Defendant," in the Superior Court of the State of California, in and for the County of Los Angeles, numbered therein 435718 then pending, for which services he then and there claimed a balance due and owing from said Melanie D. Woodd of \$4500.00.

## IV.

Allege that the said Daniel A. Knapp had likewise been the attorney for Melanie D. Woodd in said action No. 435718 in said Superior Court then pending and claimed a balance due and owing from said Melanie D. Woodd in the sum of \$2500.00.

## V.

That on or about April 10th, 1940 said Fred W. Heath and Daniel A. Knapp had a conference with said Melanie D. Woodd, whereat they set forth their said claims and requested payment, whereat said Melanie D. Woodd declared her indebtedness was not more than \$4000.00, and whereat said Daniel A. Knapp and Fred W. Heath declared they would bring a friendly suit against her, seeking a judgment from said Superior Court declarative of such sums as might be due to them for their services aforesaid, the said suit to be brought in the name of M. L. Hovey who was to act as their agent, and not otherwise; that on April 11, 1940 said action entitled M. L. Hovey, Plaintiff, vs. Melanie D. Woodd, Defendant, was filed in said Superior Court and numbered therein 450821.

## VI.

That at once and on or about April 11, 1940 said Fred W. Heath and Daniel A. Knapp in the name of their agent, M. L. Hovey, aforesaid, in said action numbered 450821, caused a writ of attachment to be issued and served upon Melanie D. Woodd, posted, recorded etc., covering the South 108 ft. of Zahn Tract as per map recorded in Book 12, p. 127 of Maps, [34] in the office of the County Recorder of said Los Angeles County, generally known as 5255 Virginia Avenue, Los Angeles,



California, and also Lot 11, Tract 314, as recorded in Book 14, pages 122 and 123 of Maps in the office of the County Recorder of said County; generally known as 1255 S. Glendale Ave. Glendale, California.

## VII.

That thereafter and on or about the 3rd day of June, 1941, said action No. 450821 was brought to trial and judgment was entered therein on July 8th, 1941, awarding to plaintiff M. L. Hovey, acting as the agent of the said Fred W. Heath and Daniel A. Knapp as aforesaid, the sum of \$4000.00, with costs of \$20.25.

## VIII.

That on or about April 12th, 1943, after execution duly issued and levy duly made, having given notice of the time and place of such sale, by advertising the same according to law, the Sheriff of the said County of Los Angeles did sell the said real property described as the South 108 feet of Lot 8 of the Zahn Tract, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 12, page 127 of Maps in the office of the County Recorder of said County, at public vendue; that the highest bidder at said sale was M. L. Hovey, then and there acting as the agent of Daniel A. Knapp and Fred W. Heath aforesaid, his said bid being in the sum of \$1775.00, and said sum was credited to said judgment of \$4000.00; that a Sheriff's deed was executed to the said M. L. Hovey then and there acting as agent and trustee of said Fred W. Heath and Daniel A. Knapp on April 18th, 1944 and recorded November 28th, 1944, in Book 21513 at page 36 of Official Records in the office of the County Recorder of Los Angeles County, and said deed was delivered to the said Fred W. Heath

who during his lifetime retained possession thereof, after which it came into the possession of Daniel A. Knapp and Edna D. Heath as Executrix of the Estate of Fred W. Heath, deceased. [35]

That on or about September 8th, 1942, after execution duly issued and levy duly made, having given notice of the time and place of such sale, by advertising the same according to law, the Sheriff of the said County of Los Angeles did sell the said real property described as being in the County of Los Angeles, State of California, particularly described as Lot 11, Tract 314, as per map recorded in Book 14, pages 122 and 123 of Maps, Los Angeles County Records, at public vendue; that the highest bidder at said sale was M. L. Hovey, then and there acting as the agent of Daniel A. Knapp and Fred W. Heath aforesaid, his said bid being in the sum of \$1250.00, and said sum was credited to said judgment of \$4000.00; that a Sheriff's deed was executed to the said M. L. Hovey then and there acting as the agent and trustee of said Fred W. Heath and Daniel A. Knapp, on April 18th, 1944 and recorded April 19, 1945 in Book 21922, at page 71 of Official Records in the office of the County Recorder of Los Angeles County, and said deed was delivered to the said Fred W. Heath who during his lifetime retained possession thereof, after which it came into the possession of Daniel A. Knapp and Edna D. Heath as Executrix of the Estate of Fred W. Heath, deceased.

## IX.

That on or about the 15th day of April, 1940 the said M. L. Hovey by an instrument in writing assigned all of his right, title and interest in and to the claim set forth in said action No. 450821 and any judgment recovered

therein, to Fred W. Heath and Myra C. Knapp in proportions of respectively 5 and 3, and on or about April 20th, 1940, the said Myra C. Knapp assigned all of her right, title and interest aforesaid to the said Daniel A. Knapp who ever since has been and now is the sole owner thereof.

### X.

That on September 8th, 1945, the said Fred W. Heath died and thereafter and in due season said Edna D. Heath became the duly [36] qualified and acting Executrix of his last will and property, and as such claims the right of the possession to and ownership of an undivided five-eighths interest in the said properties, save as hereinafter set forth.

### X.

That on or about the 28th day of January, 1946 the said M. L. Hovey, after consultation with and being duly authorized so to do, by the said Daniel A. Knapp and Edna D. Heath, sold that certain real property in the County of Los Angeles, State of California described as Lot 11, Tract 314 aforesaid for the net sum of \$2400.00, subject to distribution between said Edna D. Heath as said Executrix and said Daniel A. Knapp.

### XI.

That from and after the said Sheriff's sale of said property known as the South 108 feet of Lot 8 of the Zahn Tract, the said M. L. Hovey was permitted to retain the legal title thereto as agent and trustee of said Daniel A. Knapp and Edna D. Heath as aforesaid, to receive the rents therefrom and to pay the taxes, installment payments on the encumbrance etc. thereon, and so did until on or about September 10, 1946.



## XII.

That at all times herein mentioned the said Melanie D. Woodd knew that the said M. L. Hovey had no right, title or interest in said property save as the agent and trustee of the said Daniel A. Knapp and Edna D. Heath as Executrix of the estate of Fred W. Heath, deceased.

## XIII.

That on or about September 11, 1946 the said M. L. Hovey executed a grant deed in form to one Louis Alfred Douillard, Sr., as grantee, for the sum of \$500.00; that the said Louis Alfred Douillard, Sr., at the time of the execution of said grant deed well knew that the said property at said time had a net value in [37] excess of \$5500.00 and well knew that the said M. L. Hovey was the agent and trustee therefor and that the said deed was intended to be a conveyance of a trustee's interest only by the said M. L. Hovey, and said consideration was entirely based solely on the assumed value of said trustee's interest.

## XIV.

That forthwith and on or about September 12th, 1946 the said Louis Alfred Douillard, Sr., allegedly by reason of love and affection executed his grant deed to the said Melanie D. Woodd who accepted the same with a full knowledge of the fact that the full equitable title in said real property was in said Edna D. Heath as aforesaid and Daniel A. Knapp, and that the said M. L. Hovey at no time had or conveyed other than a trustee's interest therein.

## XV.

That hitherto, to wit: on or about August 29th, 1945, the said Melanie D. Woodd filed herein her petition in

bankruptcy; that as of said date, or 90 days prior thereto, the said Melanie D. Woodd was not the owner, nor had any right, title or interest, within the terms of Section 70 of the National Bankruptcy Act, or otherwise, of or in said real property situated in the County of Los Angeles, State of California, described as the South 108 feet of Lot 8 of the Zahn Tract as recorded in Book 12, page—127 of Maps, Los Angeles County Records, nor of said real property described as Lot 11 in Tract 314 as recorded in Book 14 pages 122-123 of Maps, Records of said County of Los Angeles, nor of any of the money, profits, rentals or derivatives from said properties, or either of them. [38]

Wherefore, said Daniel A. Knapp, and Edna D. Heath, as Executrix of the Estate of Fred W. Heath, deceased, pray that this Court may find and adjudge as follows:

1. That neither of the real properties hereinbefore described nor the real property described in the petition herein filed December 31, 1946, are properties belonging to the estate in bankruptcy of said Melanie D. Woodd;

2. That the said Fred W. Heath and Daniel A. Knapp as attorneys at law employing M. L. Hovey as their agent and trustee, did in his name sue the said Melanie D. Woodd in action No. 450821 in said Superior Court for their fees due and owing from her and judgment was had therein for \$4000.00 on or about July 8th, 1941;

3. That on or about the 11th day of April, 1940 said Daniel A. Knapp and Fred W. Heath did cause writs of attachment to be levied against the said properties and served, posted and recorded in accordance with law, and by virtue thereof did thereafter cause writs of execution to issue and said properties to be levied upon and sold

at public auction for the satisfaction of said judgment of July 8th, 1941;

4. That said sales were had in the manner and form provided by the Statutes of the State of California; that the highest bidder for said Lot 11, Tract 314 was M. L. Hovey, acting as Trustee for the said Fred W. Heath and Daniel A. Knapp, bidding \$1250.00 charged against said judgment; that the highest bidder for said South 108 feet of Lot 8 of the Zahn Tract was said M. L. Hovey acting as Trustee for the said Fred W. Heath and Daniel A. Knapp bidding \$1775.00, charged against said judgment;

5. That on or about September 8th, 1945 said Fred W. Heath died and the said Edna D. Heath in due season became and now is the duly qualified and acting Executrix of his last will and testament;

6. That on or about January 28th, 1946 at the behest and with the approval of the said Daniel A. Knapp and Edna D. Heath as [39] such Executrix, the said M. L. Hovey sold said Lot 11 of Tract 314 for the net sum of \$2400.00, to be held by him to and for the credit of said Daniel A. Knapp and Edna D. Heath as aforesaid;

7. That on or about September 11th, 1946, without the knowledge or consent of Daniel A. Knapp and Edna D. Heath, the said M. L. Hovey executed a grant deed of said South 108 feet of Lot 8 of the Zahn Tract to one Louis Alfred Douillard, Sr., for a consideration of \$500.00; that the said Louis Alfred Douillard, Sr., knew the said \$500.00 represented but a fraction of the actual and reasonable value of the said property, and at said time and place he knew the said M. L. Hovey had the bare legal title thereto and that he was purchasing a



trustee's interest therein only; that on or about September 12th, 1946 for no cash consideration the said Louis Alfred Douillard, Sr., executed his grant deed thereof to Melanie D. Woodd who, from and ever since said April 11th, 1940, or thereabout, knew the relationship of the said M. L. Hovey to the said Fred W. Heath and Daniel A. Knapp was that of agent and trustee, and knew that on September 12th, 1946 he held a trustee's title to said land only, and that the equitable ownership therein was solely in Edna D. Heath as Executrix of the Estate of Fred W. Heath, deceased, and Daniel A. Knapp; that the said Melanie D. Woodd now holds the interest in said property to wit: The South 108 feet of Lot 8 of the Zahn Tract, formerly held by said M. L. Hovey, as Trustee, and no more; and

Said Daniel A. Knapp and Edna D. Heath as such Executrix pray for such other and further relief herein as the Court may deem fit and proper in the premises.

DANIEL A. KNAPP

Attorney for Edna D. Heath, as Executrix  
of Estate of Fred W. Heath, Deceased,  
and In Pro Per [40]

[Verified.]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jan. 16, 1947. Hubert F. Laugharn,  
Referee.

[Endorsed]: Filed Apr. 12, 1948. Edmund L. Smith,  
Clerk. [42]

[Title of District Court and Cause]

MEMORANDUM OPINION AND DIRECTION TO  
PREPARE FINDINGS OF FACT AND OR-  
DERS

On July 3, 1946, I made an order overruling the Trustee's objections to the discharge of the bankrupt and granted her a discharge. On September 10, 1946, the case was closed.

Throughout the former proceeding, and particularly at the time of the granting of the discharge, the Trustee, although he did not review the said order, strenuously insisted that the bankrupt had an interest in certain real property held in the name of one M. L. Hovey, a chiropracter, and of whom the bankrupt was a patient. The Trustee in his argument prophesied that as soon as the discharge was granted the bankrupt would again come into the full enjoyment of the property which the said Trustee maintained had a value of from \$10,000 to \$15,000.

These proceedings were reopened on December 4, 1946 for purposes of further administration. John N. Helmick was elected Trustee and the said Trustee has filed herein a petition to revoke the discharge and a petition upon which an order to show cause was issued requiring the bankrupt and others to show cause why the real property in question should not be considered an asset of the within bankrupt estate.

In the former proceedings I made extensive findings supporting the contention of the bankrupt that she had no interest in the real property and that the same was held by M. L. Hovey as Trustee for Heath and Knapp. How-

ever three separate instances which have since come to light may show that I was wrong in the [43] first determination herein. They are (1) serious conflicts between the evidence herein at the present time and evidence in the former administration, (2) a hidden secret revealed by a dead man's will, and (3) stranger still, a shooting by the son of the bankrupt's nephew which frightened the former bankrupt into a belief that a judgment might result against the nephew, and, motivated by the said fear, she thereupon recorded a secret deed which reconveyed the property in question back to her.

The former Trustee and the creditors (who, to say the least, were not satisfied with the order of discharge, and who had apparently been watching the County Recorder's filings after the close of the bankrupt estate) promptly picked up the filing of the deed and thereafter the within estate was reopened.

To go back to the start of the bankrupt's troubles, we find that she inherited a substantial amount from the estate of a relative and she also received administratrix' fees therefrom of approximately \$1500. During most of the period she has been working and has had only herself to support. The four creditors herein, with claims totalling \$7500, were heirs of the said probate estate and maintained that the bankrupt violated an agreement for distribution of the estate. They filed suit in the Superior Court against the bankrupt. Heath and Knapp were employed to defend her. At the conclusion of the trial and after there was an indication by the trial judge that judgment should be for the claimants, the said attorneys representing the bankrupt immediately, and before the signing of the judgment, filed against their client (whom they nevertheless continued to represent) an



action to collect their fees for representing the bankrupt as defendant in the \$7500 action. The record shows that their demand for \$7000 fees was by them reduced without a contested trial to \$4000 and a judgment in that amount recovered. They then caused prior execution to be levied upon the assets of the bankrupt ahead of the creditors herein [44] including the real property with which we are here concerned.

The said claims of Heath and Knapp and Hovey were contested in the state court by the within creditors without success. The contentions there made by Heath, Knapp and Hovey that the within bankrupt had no interest in the real property, with which we are now concerned, were supported by the court. At about the time of the so-called friendly suit for attorney fees, which resulted in the \$4000 judgment, the bankrupt had ample funds and assets to pay the same; she had approximately \$6000 cash on deposit in a local bank.

While at the former hearings counsel for the trustee and counsel for the creditors pointed out a large number of suspicious circumstances, I nevertheless did not feel that the Trustee had met the burden of proof cast upon him sufficiently to support his contention that the real property which had been continuously in her possession since its first purchase was in fact at the time of her bankruptcy her property and therefore an asset of her bankrupt estate.

After hearing the present testimony, I now see my jurisdiction and duty as Referee herein quite clearly with respect to that portion of the hearing regarding the revocation of discharge. I granted the discharge of the bankrupt heretofore. Now under Section 15 the Trustee maintains that he has shown that the discharge should be

revoked because it was obtained through the subsequently discovered fraud of the bankrupt. In the first instance the Referee shall, under Section 14(c), grant the discharge unless satisfied that the bankrupt has committed an act which will bar his discharge. I was not satisfied at that time that the bankrupt had committed the act which would bar her discharge. Now, however, I am satisfied, and it further appears, that the actual evidence was discovered by the Trustee and creditors after the discharge was granted and that they are not guilty of laches. [45]

As to the ~~former~~ jurisdiction and ability of the court to determine that the real property, title to which is now of record in the bankrupt (who is now before the court in her own bankruptcy proceeding), is an asset of this estate and should be administered herein, I will summarize the evidence before stating my views thereon.

In the first administration herein it was the contention of the bankrupt, Hovey, and Heath and Knapp that the bankrupt had no interest in the property which had been acquired by Hovey as execution plaintiff by Sheriff's deed; that he was holding it merely as assignee for collection for Heath and Knapp; that there was no agreement by which the bankrupt could reacquire it, and further, that she continued to occupy the property, collect the rents and care for the property through sufferance.

As of today the bankrupt contends however that the property was acquired by her nephew (Louis Alfred Douillard, Sr.) for \$500, which amount he paid to Hovey for the entire property on September 11, 1946 (the day following the original closing of this estate), the property being subject only to the encumbrance with a balance of approximately \$2300. She contends further that her nephew gave her a deed to the property on the following

day. With respect to this deed, had it not been recorded, it is quite likely that this reopening proceeding would never have been brought. She testified (Tr. Vol. III, Page 21) :

“I really was going to leave it alone (the deed from the nephew to her) and live there until I died and not bother, but the boy’s son shot a woman. . . . His son, eleven years old, put a mask on and shot at a woman. They brought him into the sheriff’s Office. That is why I ran to the lawyer. I said, ‘This is what they have done, and he won’t have anything and I won’t have anything.’ So I put it through. Otherwise, I don’t think I would have ever bothered.

Question: “In other words, you would not have recorded the deed?”

Answer: “No, as long as he lived I would have lived there and let him have it.” [46]

It was the contention of the Trustee that when the property was brought in by Hovey by Sheriff’s deed dated April 18, 1944 (Judgment July 8, 1941—Sale by Sheriff April 12, 1943) for \$1775, that the plaintiff had in fact already been paid or that there was an agreement that upon the payment to Heath and Knapp of an undisclosed sum the property would then be released to the bankrupt.

On this rehearing there was introduced into evidence here the will of Fred W. Heath dated April 22, 1943 (just ten days after the execution sale). Heath died on September 8, 1945, and it then became necessary that his will



be filed, at which time it became a public record. That portion of the will pertinent here is the following:

“Mrs. Woodd owes me about \$1000 represented in the Hovey v. Woodd judgment.”

Knapp has testified that his respective interest as to Heath's in the Woodd fee was  $\frac{3}{8}$  to him and  $\frac{5}{8}$  to Heath.

Since the above date the present evidence shows that there have been at least the following admitted payments to Hovey, Heath and/or Knapp, i. e.:

To Hovey—\$500.00 Sept. 11, 1946

To Knapp—\$1600 (less \$400 on Heath's share also turned over because Heath owed Knapp) in re sale of Mrs. Woodd's property to Garnier in Glendale  
(Tr. Vol. Iv, Page 204)

To Hovey for a/c of Heath—\$1200 from same source.

To Hovey from bank when mortgage was increased  
(Tr. Vol. IV, Page 240)—\$1017.13

There was received by Heath, or on his account, \$1200. It is quite humorous to observe at the present time ~~that~~, as against the demand of the legal representative of the Heath estate, that Hovey, who has spent the \$1200 (and also the \$500) maintains that he should not be required to pay the said fund over. So it would seem that Heath has more than collected the \$1000 which he had in [47] the Woodd judgment.

It will be of interest to go back over the record and see just how the parties dealt with the property while

the title was still in Hovey's name and before it was sold by him to the nephew. I believe that the \$500 was actually paid to Hovey. He was in a position where he could demand it and that he did. It appears to have come from the bank account of the nephew, at least in the first instance, but the bankrupt in 1942, and after the obligations of the creditors herein were incurred, made him a present of an \$800 automobile, and he might have been returning in part the said gift.

M. L. Hovey testified with respect to the sale to the nephew of the bankrupt:

(Tr. Vol. IV, Page 144 and page 150, line 24)

(I did not talk to Mr. Knapp (or anyone representing the Heath estate) about the sale. I think I asked Mr. Douillard to buy.)

Q. "Do you remember testifying here to the effect that the title to the property was in your name and was to be held by you until Mr. Knapp's and Mr. Heath's fees was finally settled and they were to get part of the proceeds and you were to get part of the proceeds too?"

A. "Yes sir."

(When the Glendale property was sold I got around a thousand dollars which is now claimed by the Heath estate. I have not paid it to them. I used it in my living and in my business. It was for the sum of money he owned me for twelve years. It paid up my account with him. That \$1000 was owing to me by Mr. Heath and the \$200 was the part I was to receive for my services in that case.)

(Tr. Vol. IV, Page 148)

Q. By the Referee: "Then that paid it up?"

A. "Yes sir."

Q. By Mr. Bowden: "Then Mr. Knapp didn't owe you anything at that time?"

A. "I don't know. We had made no arrangements at all about that."

(I didn't tell Mr. Douillard that I was selling him the property subject to the rights of Knapp and the Heath estate but I thought he knew that.) Page 152. [48]

(Tr. Vol. IV, Page 152, Line 22)

Q. ". . . if he did ask you what the interest of the Heath estate and the interest of Mr. Knapp was in it, what would you have told him; how much is their interest in it?"

A. "I don't know. They had a fee that they were holding the property for. . . ."

(Tr. Vol. IV, Page 153, Line 19)

Q. "Was it your instructions that if they were paid that then you could release the property?"

A. "The property is subject to their fee."

Q. ". . . if you had the exact amount of their fee figured out, then was it your understanding that you could have released the property if that fee was paid?"

A. "Yes sir."

(Tr. Vol. IV, Page 154, Line 1)

Q. "If Mr. Douillard had come in with that exact amount of money to have paid them, then there would not have been any sort of question here?"

A. "Not that I know of. That is right."



(Tr. Vol. VI, Page 160)

(I didn't ask any questions about the grant deed when it was signed. I was anxious to get out.)

(Tr. Vol. IV, Page 161, Line 11)

Q. "Did you tell him you had \$500 of trustee fees you wanted paid and that is why you fixed the price at \$500?"

A. "No."

(Later on he felt I was entitled to take at least \$500. I believe it was him who said he thought I was entitled to a reasonable fee. I think I mentioned the \$500. He said of course he thought I was entitled to that or more.—I said before I transferred the property I should be entitled to a \$500 trustee's fee. (Page 162, line 25.) There was no written agreement with Mr. Heath and Mr. Knapp.)

(Tr. Vol. IV, Page 308, Line 23)

Q. ". . . what did you suppose he was giving you the \$500.00 for?"

A. "All he gave me the \$500 for was the place. . . . he wanted a place to live in."

(Tr. Vol. IV, Page 312, Line 19)

Q. "Did you have any conversation with Mrs. Woodd about selling the property?"

A. "No. . . ." [49]

(Tr. Vol. IV, Page 312, Line 19)

Q. "Did you have any conversation with Mrs. Woodd about selling the property?"

A. "No. . . ."

Q. "At any time?"

A. "Afterwards when they said they had transferred the deed I told her I thought that was a mistake to do that."

Q. "Why would it be a mistake, in your opinion?"

A. "Because she had just gone through bankruptcy.  
. . . It would not look very good. (Page 313, Line 9) . . . She told me that . . . her nephew's boy had been in trouble and that he had come and given her the deed. She came over, I believe, for a treatment. . . .she said she thought it was perfectly all right; he had a right to give her anything that he wanted to."

(Tr. Vol. IV, Page 315, Line 13)

Q. "Suppose she would pay them off (Heath & Knapp), would she then get it under your theory?"

A. "Yes, sir."

(I don't know how much; that would have to be between them . . . I don't think the arrangement between them is settled in amount as long as the litigation is incompleated. (Knapp)  
. . . I have received from the Woodd litigation about \$1700 (Page 319).

(Tr. Vol. II, Page 21, Line 17)

A. "He (Heath) owed me about \$1200."

Q. "About \$1200? Then you were holding this, or you were holding this property as security for a repayment of that?"

A. "Yes."

Q. "Does that \$1200 include also what you were to get for acting as the nominal party-plaintiff?"

A. "This is right. . . . It included it."

Douillard did not appear in the prior administration. However, when the proceeding was reopened he appeared as a witness and maintained that he had purchased the full title of the property from Hovey subject only to the mortgage. His explanation was somewhat mystifying: [50]

" . . . I didn't see any reason for my fixing it up for someone else. . . ." (Tr. Vol. IV, page 126, line 11.)

(I knew nothing about my aunt's bankruptcy.)  
(Tr. Vol. IV, Page 127, line 18.)

(Tr. Vol. IV, Page 128, Line 24)

Q. "You knew how Dr. Hovey happened to have the property?"

A. "Well, I knew my aunt had had trouble; that suits had been going on for years, but I had been away."

(Tr. Vol. IV, Page 130, Line 2)

Q. By the Referee: "What was the occasion the next day for making out a deed to this property which you had just bought, to your aunt?"

A. "Well, I figured in case something happened to me I would like her to have it. . . ."

Q. "Did you give her the deed?"

A. "Yes sir."



Q. "Do you know why she happened to record it?"

A. "My son got into a little trouble with the juvenile authorities. . . . She was afraid that they might sue me or something and ask me if I owned any property. . . . I just gave it to her. (The \$500 check I gave was on my bank account.) (Page 137—Mrs. Woodd gave me a present of a Plymouth automobile—I disposed of it for \$350 and put the money in the same account—I still have the \$350 in the bank.)

Later on January 23, 1947, Douillard testified:

(Tr. Vol. IV, Page 279, Line 22).

Q. "What conversation did you have with her before you went down to see Dr. Hovey?"

A. "I had no conversation with her. . . . I went to see him because I wanted to fix it up as a home; it is run down. I didn't want to invest any money in it until I had it."

(Tr. Vol. IV, Page 280, Line 10)

Q. "You don't claim any interest in it, do you?"

A. "No, except for repairs."

Q. "It belongs to your aunt?"

A. "I deeded it to my aunt."

Q. "Isn't it a fact that that property always has belonged to her; she has always lived in it?"

A. "I don't know whether it always belonged to her or not." [51]

Q. "But she has always lived in it?"

A. "Yes, sir, ever since I have known, yes."

(Page 282. I didn't have any idea what the property was worth at the market. I didn't know just what was against it. I imagine about \$2800. (The amount of balance of the mortgage was about \$2300.))

In referring to the execution of the deed by Hovey, Douillard stated that he already had the deed prepared when he went in to see Hovey. He came back and handed the deed to his aunt and told her to have it recorded. Then he states (Page 285, Line 3):

(Then I went and had the one made out with my name, to her. . . . I told her to put it away. . . . I had a friend make it out. . . . type it up. . . . It was typed up at the same time as the first one. But I didn't sign it until the next day.)

In referring to the actual details of the sale transaction with Hovey, Douillard testified (Tr. Vol. IV, Page 287, Line 23):

"He wanted to know whether I would be able to pay \$500.00. . . . He told me he was the owner."

(Page 288, Line 16)

Q. "Why did you ask him if it was all right to sell, that is rather unusual question?"

A. "Well, because my aunt had been going through bankruptcy and everything was happening; I didn't know what was going on."

(Page 290, Line 4)

Q. "When were the internal revenue stamps put on the deed?

A. "I don't know, my aunt took care of that."  
(Dr. Hovey did not tell me that my aunt owed him \$500.)

The bankrupt was most helpful to Douillard and Hovey in assisting in the details of the sale, preparation of the deeds, recording of the deed from Hovey to Douillard, purchasing the Revenue stamps therefor, etc. She testified as follows:

(Tr. III, Page 14, Line 21)

Q. "So after Mr. Knapp told you he was going to sell you [52] told your nephew to buy it?

A. "Yes. . . ." (Page 15, line 22. I don't know where he had the deed made. He brought it to me all signed and he gave it to me about September 13. He told me he paid \$500.)

(Tr. Vol. III, Page 16, Line 12)

Q. "Did you talk to Dr. Hovey yourself in connection with the sale?"

A. "No, sir."

Q. "Did you ask Mr. Knapp what the property would be sold for?"

A. "No, sir." ". . . I will tell you, Mr. Crandall (Note: her attorney) told me and some friends I have to keep away from Dr. Hovey, that I have nothing to do with him. . . ."



With respect to the recording of the deed from Douillard to Mrs. Woodd, she testified:

(Tr. Vol. III, Page 21, Line 2)

“ . . . Before I brought it to the recorder I took it to my lawyer and had him look at it, this gentleman right here, Mr. Stewart. (Note: Her present attorney in this proceeding.) I brought it to him. He said it was all right, for me to go ahead. He wanted to see if it was made right or looked right. . . . Then it was recorded. . . .

(Tr. Vol. IV, Page 233)

“ . . . Louis gave me his deeds to have them recorded and I took them down to the bank and had them look over them and they were not rightly filled out. . . . So the bank made some more. . . . (Page 234, Line 13) Louis Douillard gave me two deeds filled out. . . . by some friend of his. (Page 235, Line 20) Then I took them home again to Louis.

Q. “You took them to him and told him to sign that new form?”

A. “Yes, sir.”

It will be observed that the deed from Hovey to Douillard and also the deed from Douillard to Woodd were originally prepared at the same time.

(Tr. Vol. Iv, Page 185, Line 2)

A. “I asked him (Mr. Dick of the bank) for a couple of blanks and . . . he said to his secretary, ‘Fill in the legal for her.’” [53]

Q. "So he filled in the legal one to Mr. Douillard, and one from Douillard back to you?"

A. "That is right. . . ."

Possibly the \$500 paid to Dr. Hovey came from Mrs. Woodd; even Mr. Knapp suggested as much.

(Tr. Vol. IV, Page 328, Line 22)

The Referee: "That it came from Mrs. Woodd?"

Mr. Knapp: "Yes, that it came from Mrs. Woodd but how and in what way I do not know."

Mr. Knapp testified with respect to the statement in the will (Tr. Vol. IV, Page 330, Line 8):

"Mr. Heath at the time that this will was drawn evidently was of a mental status that he didn't know what his condition was, his financial condition. . . ."

The Referee: "Now, you are going to say that the man was not mentally sound."

Mr. Knapp: "I Don't know what it was, whether it was to put his best foot forward in his wife's mind—"

The Referee: "I don't think we should take this dead man's will here and say he made misstatements as to his assets. . . . the will has been admitted to probate. . . . You don't have to put in the will of an incompetent."

Mr. Knapp: "I don't know that he was incompetent, he was just in an extravagant mood."

Thereupon an objection to the further impeachment of the will, which incidentally had been offered for probate by Mr. Knapp, was sustained.

At the close of the case, Mr. Stewart (present counsel for Mrs. Woodd) stated:

(Tr. Vol. Iv, Page 334, Line 9)

“ . . . Their testimony is not satisfactory, it has never been satisfactory to me, any of the testimony; they don't make it clear, but because there is testimony that arouses suspicions, I don't think that can be considered to be a conspiracy.”

Mrs. Woodd stated that most of her affairs had been taken up with Mr. Heath, and that Mr. Knapp, with her consent, was brought into the case for a share of the fee. [54]

We will never fully know the details of the arrangement between the client and her attorneys. Very possibly some fee was paid by Mrs. Woodd as the matters progressed. She was amply able to do so. Heath died September 8, 1945. In his will he stated that “Mrs. Woodd owes me about \$1000 represented in the Hovey vs. Woodd judgment.” Thereafter there was paid for his account this amount. I believe Heath's written statement; he addressed it to “Dear Edna,” his widow. There was no reason that he should not be truthful with her. It is to be recalled that the judgment was recovered July 8, 1941 and the execution sale was April 12, 1943. In other words, Hovey, Heath's assignee, already had bought the property in. The will was dated April 22, 1943. This fact, the future action of the parties, and their present admissions, convinces me that the agreed obligation for fees owing by Mrs. Woodd to Heath and Knapp were fully paid at the date of bankruptcy and the said real property was at that time being secretly held in Dr. Hovey's name until the discharge was granted and the



bankruptcy closed when it would be returned to the bankrupt. And I so find.

Counsel for the Trustee is directed to prepare findings of fact, conclusions of law and order in conformance with the views expressed herein.

Dated: March 13, 1947.

HUBERT F. LAUGHARN

Referee in Bankruptcy

[Endorsed]: Filed Mar. 13, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jun. 18, 1947. Edmund L. Smith, Clerk. [55]

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[Title of District Court and Cause]

### OBJECTIONS TO FINDINGS OF FACT

Comes now Respondents, Daniel A. Knapp, and Edna D. Heath, as Executrix of the Last Will of Fred W. Heath, deceased, and files this, their objection to the proposed Findings of Fact filed herein, as follows:

#### I.

That Respondents object to Finding "V" as wholly unsustained by any material evidence of any kind whatsoever; that there is not the slightest evidence of any secret agreement as to the ultimate disposition of said real property and there is no evidence of the payment of said fees by the bankrupt; that the evidence is directly to the contrary; that said finding is scandalous and imputes dishonorable acts to an honorable member of the State Bar of California now deceased, and to Daniel A. Knapp,

also such a member, both of whom have been judicially exonerated as to said acts and conduct.

## II.

That Finding "VI" is incomplete and should be amended by adding after the word "therefor" on line 13 of page 4, Paragraph VI of said Findings, as follows: [56]

"That the said transfers were made without the knowledge and against the will of respondents, Edna D. Heath, Executrix of the Last Will of Fred W. Heath, deceased, and Daniel A. Knapp."

## III.

And respondents further object to said Finding on the ground that by it they are deprived of real property, as to them without due process of law; that they have never been in a position to subpoena witnesses or present evidence save in a negative manner and within the narrow limitations of bankruptcy proceedings.

Dated: April 21, 1947.

DANIEL A. KNAPP

Attorney for Respondents [57]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Apr. 22, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Apr. 12, 1948. Edmund L. Smith, Clerk. [58]

[Title of District Court and Cause]

## FINDINGS OF FACT AND ORDER

This matter came on regularly to be heard before me, the undersigned Referee, on the 20th day of January, 1947, at the hour of 10:00 A. M. thereof, and was thereafter regularly continued to the 23rd day of January at the hour of 2:00 P. M. thereof. The Trustee being represented by his counsel Leslie S. Bowden, and J. M. Clements; the bankrupt being represented by her counsel Arthur T. Stewart; the respondent Edna D. Heath, Executrix of the estate of Fred W. Heath, deceased, being represented by her counsel Daniel A. Knapp; and the respondents Daniel A. Knapp, M. L. Hovey, and Lewis Alfred Douillard, Sr., appearing in propria persona; and respondents Security First National Bank of Los Angeles, California, and Anna L. Hovey failing to appear, and evidence both oral and documentary having been introduced, and having heard the arguments of counsel and the parties, and the matter having been submitted to me for decision, I find:

### I.

That John L. Helmick is the duly appointed, qualified, and acting Trustee of the above named bankrupt estate.

### II.

That for many years prior to the 10th day of April, 1940, Fred W. Heath had been the attorney for the bankrupt herein, and [59] particularly in a certain action entitled "Emil A. Douillard et al, Plaintiffs, vs. Melanie D. Woodd, Defendant," in the Superior Court of the State of California, in and for the County of Los Angeles, numbered therein 435718 and filed the 17th day of



January, 1939, and in connection with said action, the respondent Daniel A. Knapp was also attorney for the bankrupt. In the said action, the plaintiffs were seeking to recover from the bankrupt the sum of Seventy-Five Hundred (\$7,500.00) Dollars, and at the conclusion of the trial, the presiding judge indicated that judgment should be in favor of the plaintiffs and against the bankrupt and thereafter a judgment was entered in said action and Fred W. Heath and respondent Daniel A. Knapp on behalf of the bankrupt appealed from the same.

### III.

Thereafter and on or about the 10th day of April, 1940, said Fred W. Heath and respondent Daniel A. Knapp discussed the amount of their fees with the bankrupt, and thereafter said Fred W. Heath and respondent Daniel A. Knapp assigned their claim against the bankrupt for attorneys' fees to respondent M. L. Hovey for collection. That on or about the 11th day of April, 1940, said Fred W. Heath and respondent Daniel A. Knapp commenced an action against the bankrupt in the Superior Court of the State of California, in and for the County of Los Angeles, entitled "M. L. Hovey, Plaintiff, vs. Melanie D. Woodd, Defendant," and numbered 450821 praying for judgment against the bankrupt in the sum of Seven Thousand (\$7,000.00) Dollars, and immediately caused a writ of attachment to be issued out of said court and levied on real property belonging to the bankrupt and described as follows:

The South 108 Feet of Lot 8 of the Zahn Tract, in the City of Los Angeles, as per map recorded in Book 12, Page 127 of Maps, in the office of [60] the County Recorder of Los Angeles County, and known as 5255 Virginia Avenue.

Said attachment was levied on other property also belonging to the bankrupt.

That on or about the 3rd day of July, 1941, the bankrupt agreed that a judgment might be entered against her in the sum of Four Thousand (\$4,000.00) Dollars, and on said day said judgment was so entered in said action number 450821.

#### IV.

That on or about the 3rd day of August, 1942, the appeal in the Superior Court action 435718 was decided adversely to the bankrupt and thereafter said Fred W. Heath and respondent Daniel A. Knapp in Superior Court action number 450821 caused an execution to be issued against the real property belonging to the bankrupt, and hereinabove described, and pursuant thereto said Fred W. Heath and respondent Daniel A. Knapp caused the Sheriff of Los Angeles County to sell the said real property and caused the same to be bid in at said sale in the name of respondent M. L. Hovey for the sum of One Thousand Two Hundred Fifty (\$1,250.00) Dollars, which said sum was credited on said judgment of Four Thousand (\$4,000.00) Dollars, and thereafter a Sheriff's deed to said real property was executed by the said Sheriff in favor of respondent M. L. Hovey. That thereafter plaintiff in action number 435718 brought an action against respondent M. L. Hovey to set aside said judgment and was unsuccessful in said action.

#### V.

That some time after the Sheriff's sale, and prior to the filing of the voluntary petition herein, a secret agreement was entered into between Fred W. Heath and respondent Daniel A. Knapp and M. L. Hovey on the one side, and

the bankrupt on the other, to the effect that the said real property above described purchased at the Sheriff's sale in the name of respondent M. L. Hovey, was [61] to be held by said M. L. Hovey until attorneys' fees in an agreed amount was paid by the bankrupt, at which time the said real property above described was to be returned to the bankrupt, and in the meantime said bankrupt was to have the use and control of said property. That the agreed attorneys' fees were thereafter and before the filing of the voluntary petition herein, paid by the bankrupt and received by said Fred W. Heath and respondent Daniel A. Knapp, through respondent M. L. Hovey as their agent in said action number 450821 above described.

That at the time of the filing of the bankruptcy proceedings herein, all of said agreed attorneys' fees had been paid. That it was further agreed between the said respondents herein and the bankrupt that the real property should not be reconveyed to the bankrupt until she should secure her discharge in bankruptcy and this estate should be closed.

The discharge of the bankrupt was granted, and thereafter this estate was closed on the 10th day of September, 1946, and on the 11th day of September, 1946, respondent M. L. Hovey executed and delivered to Lewis Alfred Douillard Sr., the bankrupt's nephew, a grant deed to the said real property above described, which said deed was immediately recorded by the bankrupt and thereupon said Lewis Alfred Douillard Sr. immediately executed and delivered to the bankrupt as "grantee" a grant deed to said real property above described. That the bankrupt did not at the time of the receipt of said grant deed intend to record the same, but owing to unforeseen circumstances arising thereafter, she believed that a judg-



ment might be recorded against respondent Lewis Alfred Douillard Sr. who held the record title to said real property, and she thereupon recorded the said grant deed in which she was the "grantee." That after the closing of the bankruptcy proceedings, and at the time of the execution of the grant deed from said respondent M. L. Hovey to respondent Lewis Alfred Douillard Sr., the latter paid to said [62] respondent M. L. Hovey the Trustee's fee in the amount of Five Hundred (\$500.00) Dollars demanded by respondent M. L. Hovey for his services rendered as Trustee and Agent for Fred W. Heath and respondent Daniel A. Knapp.

## VI.

The said real property was at the date of the bankruptcy proceedings an asset of the bankrupt estate, although it was not listed in her bankrupt schedules. That during the prior administration of the said bankrupt estate, the said facts hereinabove referred to with respect to the plan to conceal the said real property from the bankrupt's Trustee, were not discovered and that the concealment having been discovered after the discharge was granted, the creditors caused the estate to be reopened. Whereupon the discharge heretofore granted the bankrupt was set aside with a determination that the fraud of the bankrupt was discovered after the said discharge was granted and the within proceedings instituted to declare that the real property was an asset of the bankrupt estate.

## CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts, the Court finds that the real property herein above described was at and at all times subsequent to the filing of the voluntary petition in bankruptcy herein, an asset of this bankrupt estate and that the respondents have no right title, lien or claim thereto; and it is therefore

Ordered that the respondents have no right title, interest, lien, or claim in and to said real property described as follows:

The South 108 Feet of Lot 8 of the Zahn Tract, in the City of Los Angeles, as per map recorded in Book 12, Page 127 of Maps, in the office of the County Recorder of Los Angeles County, and known as 5255 Virginia Avenue. [63]

That said real property is an asset of this bankrupt estate and the title thereto is and was at all times herein mentioned subsequent to the adjudication in bankruptcy herein vested in the Trustee.

Dated: Los Angeles, California, this 3 day of May, 1947.

HUBERT F. LAUGHARN

Referee

[Endorsed]: Filed Apr. 26, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jun. 18, 1947. Edmund L. Smith, Clerk. [64]

[Title of District Court and Cause]

PETITION FOR REVIEW OF REFEREE'S ORDER  
IN BANKRUPTCY

To the Honorable Hubert F. Laugharn, Referee:

Your petitioners, Edna D. Heath, as Executrix of the Last Will of Frederick W. Heath, Deceased, and Daniel A. Knapp hereby petition for the review by the judge of the above Court, of your order entered May 3rd, 1947, and that the same be vacated and set aside, and to that end allege as follows:

I.

FACTS OF THE CASE

That the said Findings of Fact as set forth in Paragraphs I, II and III present the facts only so far as they assume so to do; that, however, the following are additional facts not therein set forth:

(1) That in April, 1940, the said M. L. Hovey executed his written assignment of his claim as set up in the complaint in said action No. 450821 in the Superior Court of Los Angeles County, and to any judgment that might be secured thereby to Fred W. Heath and Myra C. Knapp, and Myra C. Knapp thereafter and on April 20, 1940 assigned her said interest to Daniel A. Knapp, and said assignments to Fred W. Heath and Daniel A. Knapp remain in full force and effect to this day. [65]

(2) That on or about February 9th, 1943, the said Fred W. Heath and Daniel A. Knapp caused a writ of execution to issue in said action No. 450821 upon that certain real property of Melanie D. Woodd lying and



situate in the City of Los Angeles, County of Los Angeles, State of California, described as:

The South 108 feet of Lot 8 of the Zahn Tract as per map recorded in Book 12, page 127 of Maps, in the office of the County Recorder of said County;

and upon the 12th day of April, 1943, they caused the Sheriff of said County and State to sell said property under said writ of execution in the manner and form prescribed by law, to the highest bidder therefor; that at said sale the said Fred W. Heath and Daniel A. Knapp bid in said real property in the name of the said M. L. Hovey, who then and thereafter agreed to act in respect to said property as their agent and trustee and within their instructions and directions; that the purchase price was \$1775.00, which said Sheriff charged off against said judgment of \$4000.00 plus costs; that the said M. L. Hovey at no time paid any consideration for the deed at the time of said sale executed to him as aforesaid.

(3) That subsequent to the said Sheriff's sale, the said Fred W. Heath and Daniel A. Knapp made an agreement with the said Melanie D. Woodd whereby she was to have and occupy an apartment in their said property and in consideration therefor was to collect the rentals from said property and deliver the same to M. L. Hovey as their agent aforesaid, and the said Melanie D. Woodd did collect said rentals and deliver the same to M. L. Hovey, and occupies said apartment to this day.

(4) That subsequent to the said Sheriff's sale the said Fred W. Heath and Daniel A. Knapp directed and instructed their said agent and trustee, M. L. Hovey, to receive said rentals from the said Melanie D. Woodd and to expend the same for the payment of the necessary ex-

penses connected with said property, inclusive of [66] installment payments upon the existing encumbrance standing against said property and to keep an account thereof open to their inspection; and the said M. L. Hovey did follow said instructions and directions save as hereinafter set forth.

(5) That on September 8th, 1945, the said Fred W. Heath died and in due season plaintiff Edna D. Heath was appointed the Executrix of his Last Will, who ever since has served and does now serve in that capacity.

(6) That for a considerable period of time prior to September 11th, 1946, the said Melanie D. Woodd had, as a boarder in her said apartment, a nephew named Louis Alfred Douillard; that the said Louis Alfred Douillard well knew that the actual ownership of said property was in Daniel A. Knapp, and the said Estate of Fred W. Heath, Deceased, and that M. L. Hovey, while holding the legal title thereof, was acting merely as their trustee; that Melanie D. Woodd at all times herein mentioned knew that the ownership of said property was not in M. L. Hovey but that he was merely the agent of Daniel A. Knapp and the estate of Fred W. Heath, deceased, notwithstanding that he was permitted to be the record owner thereof for the time being.

That while fully possessed of said knowledge the said Louis Alfred Douillard and Melanie D. Woodd connived and conspired together to the end of securing on or about said September 11th, 1946, the execution of a grant deed of said real property by M. L. Hovey to the said Louis Alfred Douillard, Sr. and by the further immediate execution of a grant deed of said real property by the said Louis Alfred Douillard to Melanie Selena Woodd (other-

wise known as Melanie D. Woodd); that the said M. L. Hovey received \$500.00 for so doing and the said Louis Alfred Douillard has ever claimed the said \$500.00 was his money, but the said Melanie D. Woodd received his said deed without any consideration whatsoever; that at said time the said property had an approximate value over and above the existing encumbrance, greatly in excess of said purchase price; that the said Louis Alfred Douillard at said time [67] had no evidence of any title in the said M. L. Hovey save a tax receipt, and entered into no escrow thereto concerning, and had no title search thereof; that the said transaction was done secretly without any hint thereof to the said Edna D. Heath or Daniel A. Knapp and the deed to said Melanie D. Woodd was not recorded until October 18, 1946.

(7) That long prior to the said 10th day of September, 1946, the said Melanie D. Woodd had filed her petition in bankruptcy herein, and on said September 10th, 1946 was fully discharged therein.

(8) That subsequent to October 18th, 1946, the Trustee of the Estate of Melanie D. Woodd, Bankrupt secured an order addressed to said Melanie D. Woodd et al., to show cause why the said matter should not be re-opened and the said real property be declared an asset of said bankrupt's estate, and the Referee herein has so ordered.

## II.

### RELATING TO FINDINGS OF FACT

That the allegations of Paragraph V of said Findings of Fact are untrue in the following:

(1) That no secret agreement, or otherwise, was made, as in said paragraph set forth to the effect that said real property above described and purchased in the name of



M. L. Hovey was to be held by the said M. L. Hovey until "attorneys' fees in an agreed amount was paid by the bankrupt, at which time the said real property above described was to be returned to the bankrupt . . ."; that no writing, without which such an agreement would be entirely ineffective, was ever executed or testified to; that no oral agreement to such an effect was ever made by said parties, or at all; that no attorney's fees were due and owing by Melanie D. Woodd to the said Daniel A. Knapp and Fred W. Heath, or either of them, from and after July 3rd, 1941, at which time their claim for fees became merged into said judgment in the sum of \$4000.00 in said action No. 450821, and said judgment was not entirely paid even after the sale on execution of [68] said real property on or about April 12th, 1943, and remains partially unpaid to this day; that no payment of moneys for any purpose was made to the said Fred W. Heath and Daniel A. Knapp, or either of them by the said Melanie D. Woodd after said Sheriff's sale and prior to the filing of said petition in bankruptcy by her; that there was no agreement in writing or understanding to the effect that said real property should not be reconveyed by the said M. L. Hovey until after her discharge in bankruptcy; that said finding is based on no facts at all, but on imagination only, with no grounds at all for a legal inference.

(2) That the said real property was not, as of the date of the bankruptcy proceedings, an asset of said bankrupt's estate; that under the contemplation of the law the only estate that was transferred to Melanie D. Woodd was that of an estate in trust for the benefit of the Estate of Fred W. Heath, deceased and Daniel A. Knapp; that the attempt of the said Trustee in bankruptcy to take

over the said property to be sold for the benefit of the creditors of Melanie D. Woodd in bankruptcy amounts to a legal fraud on the actual owners of said property and would amount to confiscation of their property without due process of law, since at no time in the proceedings in bankruptcy have they had an opportunity to bring in their own witnesses in proof of their allegations of fact herein contained, save from the witnesses subpoenaed by said Trustee in Bankruptcy.

That said matter came on for final hearing on January 20th, 1947; that said Referee in bankruptcy made and executed his said Findings and order on May 3rd, 1947.

### III.

That a copy of the order of the Referee is attached hereto and made a part hereof and marked Exhibit "A".

### IV.

That said order is erroneous for the following reasons, to wit: [69]

(1) That the Findings of Fact, Paragraph V, wherein it is stated:

"That some time after the Sheriff's sale, and prior to the filing of the voluntary petition herein, a secret agreement was entered into between Fred W. Heath and respondent Daniel A. Knapp, and M. L. Hovey on the one side, and the bankrupt on the other, to the effect that the said real property above described purchased at the Sheriff's sale in the name of respondent M. L. Hovey, was to be held by said M. L. Hovey until attorneys' fees in an agreed amount was paid by the bankrupt, at which time the said real property above described was to be returned to the bankrupt, and in the meantime said bankrupt was to have the

use and control of said property. That the agreed attorneys' fees were thereafter and before the filing of the voluntary petition herein, paid by the bankrupt and received by said Fred W. Heath and respondent Daniel A. Knapp, through respondent M. L. Hovey as their agent in said action number 450821 above described."

is not sustained by the evidence and is against evidence.

That as to the alleged secret agreement, no one testified to such an agreement, but did testify that there was no such agreement, either before or after the said sale, or at all, so that the finding in that respect is against evidence; that the impossibility of such a finding is apparent when it is realized that the said judgment in said action No. 450821 ended all claim on the part of Knapp and Heath for fees; and when it is further realized that the property was sold under execution at a Sheriff's sale conducted presumptively in absolute accord with the requirements of the law, to the end that, aside from the limitations of the equity of redemption, it became the absolute property of the purchasers without regard to the original obligations involved.

(2) That no evidence of a writing legally binding on the said Daniel A. Knapp, Fred W. Heath or M. L. Hovey to convey said real [70] property to Melanie D. Woodd was produced at said hearing, or at all; that the sole evidence looking toward any agreement of such a nature was that Melanie D. Woodd, in consideration of the collection of rents from tenants on said property and the delivery thereof to M. L. Hovey, together with her services in caring for said property, was to and did receive the use of an apartment free of charge; that at no



time did she have the control of said property, and her control in no particular went further than the foregoing.

(3) That no moneys as attorneys' fees were received by Daniel A. Knapp and, or Fred W. Heath before the filing of the bankruptcy petition herein, or at all, and there is no evidence whatsoever of such payment; that there was evidence of the payment of moneys to M. L. Hovey as their agent on the sale of that certain property bought by him as their agent at a Sheriff's sale, and which he held to their benefit as the actual owners thereof, but said money was not fees, but was the sales return on their own property, and there is not a scintilla of evidence in the record to the contrary; that there is no evidence that at the time of the filing of the said bankruptcy proceeding, all of said attorneys' fees had been paid; that the record herein shows a judgment in favor of M. L. Hovey as the agent of Daniel A. Knapp and Fred W. Heath in the sum of \$4000.00, together with costs in the sum of \$20.25 and expenses of sale, upon which interest was accruing at the rate of 7% per annum; that the said judgment was credited with the purchase price of two properties under execution in the sum of approximately \$2900.00, and from other sources in the sum of approximately \$600.00 additional, leaving approximately \$1000.00 of said judgment still owing and unpaid. That it is true that Fred W. Heath in his will stated that there was owing to him from Melanie D. Woodd, out of the Hovey judgment about \$1000.00, and it would appear that his estimate was comparatively correct, but he referred to an unpaid balance on the judgment, and did not even mention fees; he could not declare fees were still due and owing, since [71] the fee claim was merged in the judgment and that obligation became a new and distinct obli-

gation against Melanie D. Woodd and took the place of the claim for fees.

(4) That said Finding further stated:

“That it was further agreed between the said respondents herein and the bankrupt that the real property should not be reconveyed to the bankrupt until she should secure her discharge in bankruptcy and this estate should be closed.”

That there is no evidence in support of said finding and said finding is against evidence; that it is true that the within estate in bankruptcy was closed on September 10th, 1946; and it is moreover true that in pursuance of a conspiracy between M. L. Hovey, Louis Alfred Douillard and the said Melanie D. Woodd, M. L. Hovey was to and did execute his grant deed to Louis Alfred Douillard, Sr. on September 11th, 1946, and Louis Alfred Douillard was to and did execute his grant deed to Melanie Selena Woodd (also known as Melanie D. Woodd), as of approximately the same date; that in order to secure the execution of said deed from the said M. L. Hovey to Louis Alfred Douillard, the said M. L. Hovey was paid \$500.00, but as your petitioners are informed and believe and on that ground allege the said \$500.00, in deed and in truth, was money belonging to or owing to Melanie D. Woodd by the said Louis Alfred Douillard; that it is true that the said Melanie D. Woodd testified that she recorded her said deed solely because she was afraid some judgment would be had against Louis Alfred Douillard

endangering said real property, but as petitioners are informed and believe and on that ground allege, no action was brought against Louis Alfred Douillard jeopardizing said deed, and said deed of Melanie D. Woodd was not recorded by reason thereof, but solely so as to secure to herself title of record to said property and in the belief that such title would be secure as to all adverse claimants, since said recordation was more than one month after her final discharge in [72] bankruptcy; that all of the said acts of M. L. Hovey, Louis Alfred Douillard, Sr. and Melanie D. Wood were done against the will and without the knowledge of Edna D. Heath or Daniel A. Knapp, and for the purpose of defrauding them of said real property.

## V.

That the conclusion of law that the respondents have no right, title, interest, lien or claim to said real property, as applied to respondents, Edna D. Heath, as Executrix of the Last Will of Fred W. Heath, deceased, and Daniel A. Knapp is erroneous both in fact and in law, as demonstrated in the points and authorities attached hereto and made a part hereof.

Wherefore, your petitioners pray for a review of said Order and that said Order be vacated and set aside.

DANIEL A. KNAPP

Attorney for Petitioners [73]



[Title of District Court and Cause]

POINTS AND AUTHORITIES ON PETITION FOR  
REVIEW

I.

THE EFFECT OF THE JUDGMENT RENDERED  
IN ACTION NO. 450821 ON ATTORNEY'S  
FEES

1. Factually, the judgment of \$4000.00 for attorney's fees due and owing Fred W. Heath and Daniel A. Knapp by Melanie D. Woodd was entered in favor of their agent M. L. Hovey on July 3rd, 1941.

2. Effect.

(a) California Nat. Supply Co. vs. Porter, 83 Cal. App. 758 on page 761, par. 2:

"However, no possible doubt can exist that the plaintiff's cause of action abated when it recovered judgment on the note."

On page 763, par. 4:

"The cause of action upon the note became merged in the judgment, and also it may be said that upon the principle of estoppel the securing of a judgment upon the note results in a waiver of appellant's right to seek another remedy by asserting and foreclosing the lien as a means of realizing upon the same obligation." [76]

In the instant case, the recovery of a judgment created a new debt or liability, distinct from the original claim

for attorneys' fees, which vanished from the picture and the judgment took its place.

Timm v. McCartney, 30 Cal. App. (2d) 241, on page 248:

"The rule in this regard is thus stated in 34 Corpus Juris at page 755: 'As a general rule the recovery of a judgment creates a new debt or liability, distinct from the original claim or demand, and this new liability is not merely the evidence of the creditor's claim, but is thereafter the substance of the claim itself.'"

Hutchinson v. Reclamation Dist. No. 1619, 81 Cal. App. 427, page 438, par. 2

applies herein. The old claim of fees disappeared. The judgment was a new distinct liability.

## II.

### THE ESTATE CONVEYED BY THE SHERIFF'S DEED

Estate of Pierce, 28 Cal. App. (2d) 8 (Syllabus):

"The sale by the Sheriff on an execution against a judgment debtor has the same force and effect as a conveyance by the judgment debtor, . . ."

Application. M. L. Hovey, as to all the world, save his cestui que trustents became the legal owner of the Zahn Tract property on the purchase of that property under execution in 1943.

## III.

## ATTRIBUTES OF OWNERSHIP

## Section 679 Civil Code:

“The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.”

*Burris v. Rodrigues*, 22 Cal. App. 645 on p. 647:

“Of course, it is axiomatic that where a person has a [77] right to the use and enjoyment of property he is entitled to have it protected against invasion by another and his ownership of the property carries with it the right to the full use and enjoyment of it or of disposing of the entire interest to another.”

Application to the within case.

Having purchased the property at issue and holding it under the trusteeship of M. L. Hovey, Knapp and Heath had the right to dispose of it as they chose. Even if they desired to transfer it to Melanie D. Woodd, that was their right. And if they wished to enter into a secret agreement with her—after they had become the actual owners thereof—to return the property to Mrs. Woodd, that also was their right. No such agreement was made or contemplated, but had it been made, only a single question could be examined by this Court, to wit: whether they at any time legally transferred the property to Mrs. Woodd, so that, thereby, it became subject to her debts in bankruptcy.



## IV.

HOW COULD SUCH TRANSFER BE LEGALLY  
MADE?

Section 1971 C. C. P.:

“No estate or interest in real property, other than for leases for a term not exceeding one year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.”

Edwards vs. Lewis, 25 Cal. App. 168;

Paul vs. Layne & Bowler Corp. 9 Cal. (2d) 561.

An oral contract to convey realty is unenforceable because of the statute of frauds.

Sesma vs. Ellis, 38 Cal. App (2d) 139. [78]

Application.

Finding V. says: That some time after the Sheriff's sale and prior to the filing of the voluntary petition herein . . . ” and then declares a secret agreement was made as between Knapp, Heath, Hovey and Woodd to the effect that “the said real property was to be returned to the bankrupt . . . .”

Not only did the finding fail to say there was any writing to that effect, but it did not even attempt to fix a date for such an alleged agreement. It was as vague as the

story books: "Once upon a time"; it said "That some time", thus establishing a confession of utter uncertainty. No language of the alleged agreement was set out. It was merely "to the effect". There was not the slightest vestige of any evidence of such an agreement. No one so testified.

Since neither the finding nor any factual evidence in support thereof establishes a written contract providing for the transfer of this land by Knapp, Heath or Hovey to Mrs. Woodd, it is clear that no conclusion of law determining that such transfer was made, can stand.

## V.

### THE PROPERTY IS HELD BY MRS. WOODD BY VIRTUE OF A CONSTRUCTIVE TRUST ONLY

#### Section 2224 Civil Code:

"One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it."

#### Section 2243 Civil Code:

"Everyone to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration." [79]

Thompson vs. Bank of California, 4 Cal. App. 661 involved a promissory note executed to Bell for \$29,262.18, but Bell acted as agent and trustee for Thompson as to an undivided one-half. Bell became indebted to defendant

bank and pledged the note to it without Thompson's consent. The Bank knew of Thompson's interest. On page 667 thereof the decision states:

"And a court of equity will enforce a trust against all persons who, with notice of the trust, come into possession of the trust property, in the same manner and to the same effect as against the original trustee."

As to land see

Nougues vs. Newlands, 118 Cal. 102.

One who takes title to property with knowledge of the equitable ownership of others therein is a trustee for such other persons.

Calkins vs. Calkins, 62 Cal. App. 292.

In Middlecoff vs. Durnal, 130 Cal. App. 119 Middlecoff, an attorney, made an agreement with Kelly that Middlecoff was to prosecute certain actions to perfect title in certain lands in Kelly and was to receive back his advances and have one half of the over plus as and for his services. Three lots thus came into the hands of Kelly. Kelly deeded the three lots to his wife, Ione and Ione deeded the three lots to her sister, Pearl M. Durnal. Middlecoff brought suit, seeking a decree of the Court declaring him to be half owner of the said lots. Notice was proved. The claim was made that Durnal, the defendant, was an innocent purchaser for value, but that was disproved. The judgment of the Court was: (page 122)

"As we have heretofore pointed out, the appellant had both constructive and actual notice of the respondent's claim and, under the circumstances shown,



it must be held not only that the appellant took the property subject to the claim of the respondent, but that this claim was an existing interest which could not be defeated by mere haste in conveying the property before the same could be judicially established." [80]

Application: M. L. Hovey held the property as the Trustee for Knapp and Heath. The entire purchase price to Hovey was paid from the Heath-Knapp judgment; none by Hovey. Hovey assigned the claim and any judgment therefrom arising to Knapp and Heath. Hovey corroborated this in his testimony. Quoting from Hovey's testimony:

Transcript p. 145, 1. 3:

"Q. And you talked with him, (Knapp) about this sale, didn't you?

A. No, I never did talk with him about it.

Q. Why didn't you?

A. I don't know why I didn't."

Transcript, page 150:

"Q. You mean you said you were turning it over to him (Douillard) to hold for Mr. Knapp?

A. Until whatever settlement he would make."

. . . . .

Transcript, page 150, 1. 19:

"Q. Then who had an interest in it?

A. The only interest was in Mr. Heath's estate and Mr. Knapp."

Mrs. Woodd accepted and holds her deed with complete knowledge of the trust in Hovey. She was the defendant in the original suit of Hovey vs. Woodd, Action No.

450821 Superior Court of Los Angeles County, wherein he was to and did act as plaintiff for the purpose of collecting the Heath-Knapp fees, or forcing it to judgment.

Mrs. Woodd's testimony: (Transcript, page 17, 1. 3, by the Referee).

"Q. When you went to see Mr. Knapp, you say he was sort of worried?

A. Yes, because I had named him in this bankruptcy.

Q. Did he tell you how much Dr. Hovey would sell the [81] property for, or how much he wanted as a fee? A. No, sir.

Q. Apparently Dr. Hovey was holding the property as you recall now, for Mr. Knapp?

A. He was an assignee.

Q. Holding it for him? A. Yes.

Q. In other words, it was really Mr. Knapp's property, isn't that it?

A. I would imagine so. Yes sir, but the deeds were in Dr. Hovey's name.

Q. But, as I recall the facts we had a hearing here, I am rather hazy on that—but Dr. Hovey, you might say, was acting as agent for Mr. Heath and Mr. Knapp.

A. Yes, mostly Mr. Heath I think."

Mrs. Woodd's testimony relating to Douillard's knowledge was as follows:

Transcript page 27, 1. 22:

"Q. How did you know Mr. Knapp wanted to sell the property?

A. He just said: 'I am going to sell.' That is all, and he walked back into his room.

Q. Why didn't you ask him how much he wanted to sell it for?

A. You can't talk to Mr. Knapp when he is bitter and angry.

Q. Then you had an idea the property could be bought so you told your nephew to go and see Dr. Hovey?

A. No, I didn't have an idea it could be bought. I just talked about what he (Knapp) said he was going to do and the boy (Douillard) evidently took it upon himself, as long as it was going to be sold. I guess anybody would have done it.

Q. I was wondering why he didn't go in and see Mr. Knapp because he was the real owner.

A. I don't know." [82]

Here then we have Douillard notified of the actual ownership of the property. Why did he not go to the owner? The answer is in the fact that there was a lot in the conversation with Douillard that Mrs. Woodd admitted, leading to the conclusion that she advised Douillard then and there that Hovey had the deed in his name and therefore, to get a deed from him. The fact remains that Douillard knew Hovey was merely a trustee.

M. L. Hovey's testimony as to Douillard: (Tr. p. 150)

"Q. You mean you said you were turning it over to him (Douillard) to hold for Mr. Knapp?

A. Until whatever settlement they would make."

Elsewhere Hovey testified it was the understanding with Douillard that he was passing to Douillard the trusteeship only.



The cited case of Middlecoff vs. Durnal is on all fours with the instant case in that notice of the trust was in Mrs. Woodd and that she should be declared as holding the said property for the Estate of Fred W. Heath and Mr. Knapp.

## VI.

### CONCLUSION

Fees, "as such", were extinguished by the judgment in Action No. 450821 aforesaid. The sale of the property under execution to M. L. Hovey completed the erasure of the fee question. As owner of the legal title, Hovey could dispose of it as he wished subject only to his trust. As owners of the equitable title Knapp and Heath could so do through their said trustee. The knowledge of the trust was in Mrs. Woodd. The question is not one of fees, but of property rights in the Zahn Tract property. Knapp and Heath never executed any writing transferring said property to Woodd or any one else. The Trustee in bankruptcy has no greater title than Mrs. Woodd, which was merely that of a Trustee under a constructive trust in favor of the Estate of Fred W. Heath and Daniel A. Knapp. The Referee's Order is clearly erroneous.

D. A. KNAPP

Attorney for Petitioners [83]

[Verified.]

[Endorsed]: Filed Jun 11, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jun. 18, 1947. Edmund L. Smith, Clerk. [84]

In the District Court of the United States  
Southern District of California  
Central Division  
In Bankruptcy No. 44,032-B

In the Matter of

MELANIE DOUILLARD WOODD,

Bankrupt.

ORDER ON PETITION FOR REVIEW OF  
REFEREE'S ORDER

Upon the petition for review of the bankrupt, Melanie Douillard Woodd, and the petition for review of Edna D. Heath, Executrix of the last will of Fred W. Heath, deceased, and Daniel A. Knapp, filed on the 11th day of June, 1947, and upon the certificate of the Referee dated the 18th day of June, 1947, and filed, and upon all the proceedings had before the Referee as appears from his said certificate, and upon hearing counsel for the parties, it is

Ordered:

1. That the above-mentioned petitions are, and each of them is, denied.

2. That the Referee's orders are, and each of them is, confirmed, and the findings of fact and conclusions of the Referee are hereby adopted as the findings of fact and conclusions of law of the Court.

Dated: December 1st, 1947.

C. E. BEAUMONT

District Judge

Judgment entered Dec. 2, 1947. Docketed Dec. 2, 1947. Book C. O. 47, page 220. Edmund L. Smith, Clerk; by Murray E. Wire, Deputy.

[Endorsed]: Filed Dec. 1, 1947. Edmund L. Smith, Clerk. [85]

[Title of District Court and Cause]

### NOTICE OF APPEAL

Notice is hereby given that Edna D. Heath, Executrix of the Last Will of Fred W. Heath, deceased, and Daniel A. Knapp, appearing herein as Respondents under a duly issued order to show cause why certain real property belonging to them and held in the name of their trustee, M. L. Hovey, and further appearing herein as petitioners for a writ of review of the adverse decision rendered by the Honorable Hubert F. Laugharn, Referee herein in bankruptcy, hereby appeals to the United States Circuit Court of Appeals, for the Ninth Circuit, from the Order entered December 2nd, 1947, in C. O. book 47, page 220, denying petition for review of the said Edna D. Heath, Executrix aforesaid, and Daniel A. Knapp, and confirming the orders of the Referee and adopting by the Court the Findings of Fact and Conclusions of Law of the Referee.

Dated: December 26, 1947.

DANIEL A. KNAPP

Attorney for Edna D. Heath, Executrix of the Last Will  
of Fred W. Heath, Deceased, and in Pro Per [86]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Dec. 26, 1947. Edmund L. Smith,  
Clerk. [87]



[Title of District Court and Cause]

ORDER EXTENDING TIME FOR FILING AND  
DOCKETING RECORD ON APPEAL

Good cause appearing therefor, It Is Hereby Ordered that appellants may have to and including the 15th day of February, 1948, within which to docket their appeal and the record on appeal in the above entitled cause in the United States Circuit Court of Appeals, for the Ninth Circuit.

Dated: February 2nd, 1948.

PAUL J. McCORMICK

Judge

[Endorsed]: Filed Feb. 3, 1948. Edmund L. Smith,  
Clerk. [91]

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[Title of District Court and Cause]

ORDER EXTENDING TIME FOR FILING AND  
DOCKETING RECORD ON APPEAL

Good cause appearing therefor, It Is Hereby Ordered that appellants may have to and including the 24th day of March, 1948, within which to docket their appeal and the record on appeal in the above entitled cause in the United States Circuit Court of Appeals, for the Ninth Circuit.

Dated: February 10, 1948.

C. E. BEAUMONT

Judge [92]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Feb. 11, 1948. Edmund L. Smith,  
Clerk. [93]

In the District Court of the United States for the  
Southern District of California  
Central Division

In Bankruptcy No. 44,032-B

In the Matter of

MELANIE DOUILLARD WOODD,

Bankrupt.

---

EDNA D. HEATH, as Executrix of the Last Will of  
FRED W. HEATH, Deceased, and MYRA C.  
KNAPP, as Executrix of the Last Will of DANIEL  
A. KNAPP, Deceased,

Appellants,

vs.

JOHN N. HELMICK, Trustee of the Estate of  
MELANIE DOUILLARD WOODD, Bankrupt,  
Respondent.

ORDER SUBSTITUTING MYRA C. KNAPP, EXE-  
CUTRIX OF THE LAST WILL OF DANIEL  
A. KNAPP, DECEASED

Upon the reading and filing of the petition of Myra  
C. Knapp, Executrix of the Last Will of Daniel A.  
Knapp, deceased, and good cause appearing therefor,

It Is Ordered that Myra C. Knapp, Executrix of the  
Last Will of Daniel A. Knapp, deceased, be and she is  
hereby substituted as one of the appellants herein in the  
place and stead of Daniel A. Knapp, deceased.

Dated this 23rd day of March, 1948.

LEON R. YANKWICH

Judge [94]

[Title of District Court and Cause]

PETITION FOR SUBSTITUTION OF MYRA C.  
KNAPP, EXECUTRIX OF THE LAST WILL  
OF DANIEL A. KNAPP

To the Honorable Judges of the Above Entitled Court:

The verified petition of Myra C. Knapp respectfully shows unto the Court as follows:

I.

That Daniel A. Knapp, one of the respondents in this matter, departed this life on January 24, 1948, subsequent to the filing of his appeal to the Circuit Court of Appeals for the Ninth Circuit of this matter and on the 27th day of February, 1948, your petitioner [95] was appointed Executrix of his estate.

II.

Pursuant to Rule 25 of the Federal Rules of Civil Procedure, your petitioner should be substituted as a party in the place of Daniel A. Knapp, deceased.

III.

That upon her appointment as Executrix of said estate of Daniel A. Knapp, deceased, petitioner retained Ernest R. Utley and J. Geo. Ohanneson to prosecute said appeal.

Wherefore petitioner prays that an order be entered herein substituting your petitioner as Executrix of the Last Will of Daniel A. Knapp, deceased, as a party respondent in the above matter and that Ernest R. Utley and J. Geo. Ohanneson be designated as her attorneys in the above matter.

MYRA C. KNAPP

ERNEST R. UTLEY

Of Counsel for Petitioner

[Verified.]

[Endorsed]: Filed Mar. 23, 1948. Edmund L. Smith,  
Clerk. [96]



## [TRUSTEE'S EXHIBIT NO. 1]

[Hearing of October 3, 1945]

Acct. Closed Apr 12 '39

Wood—Melanie D.

Security Office Term No. 585201

I hereby agree to the conditions printed in the Bank Book issued in connection with this account by the Security-First National Bank of Los Angeles.

Mr.

Sign

Mrs.

Here

Melanie D. Woodd

Miss

Residence

Address 5255 Virginia Ave L A Tel. O.L. 9158  
City

Business

Address

Tel.

-----  
City

Other A/Cs Estate Acct of

Occupation Nurse This Branch Emily S. Donahue dec'd  
Former Bank Account  
or Reference

-----

Birth

Introduced By Mr. Kessler Place Los Angeles, Calif.

Mother's Maiden Name

Emily S. De Vigueran

First Deposit

Acct. Opened By

Date

\$14.15

[Illegible]

[Illegible]

Account No. 585201

Melanie D. Woodd

-1

Date	Withdrawn	Interest	Deposited	Balance
Sep 22 '38		02	5	
Sep 22 '38		03	9 15	14 15
Sep 27 '38		1 50	400	414 15
Oct 19 '38	Douillard		9 75	423 90
Nov - 3 '38			199 94	623 84
Nov 19 '38	"	1 55	9 75	633 59
Nov 23 '38	15 00			618 59
Nov 26 '38	200			418 59
Dec 12 '38	15			403 59
Dec. 31, 1938	Interest		1 55	405 14
Feb 11 '39	50			355 14
Feb 17 '39	40			315 14
Mar 10 '39	15 14			300
Mar 13 '39			50	350
Mar 14 '39	30			320
Mar 20 '39	50			270
Mar 28 '39	15			255
Apr 5 - '39	40			215
Apr - 8 '39			6 790 55	7 005 55
Apr 10 '39	6 805 55			200
Apr 12 '39	200			

Forward

2399\* K.I. Term Savings Ledger Card—Security-First National Bank of  
Los Angeles

U. S. District Court No. 44032-B. Trustee's Exhibit  
No. 1. Filed Oct. 3, 1945. Hubert F. Laugharn, Ref-  
eree.

[Endorsed: Filed Apr. 12, 1948. Edmund L. Smith  
Clerk. [110]]

## [TRUSTEE'S EXHIBIT NO. 1]

[Hearing of April 5, 1946]

Received from Estate of Emily S. Donahue, Dec'd

Cash legacy	\$10,000.00	
Executrix' fee cash	1,500.00	
	<hr/>	
	\$11,500.00	\$11,500.00
Out of agreement for distribution		
1824 S Vermont Ave net		6,400.00
		<hr/>
Total		\$17,900.00
Received from Bank	1,000.00	
“ Yarbrough net sale	150.00	
“ payments	160.00	
Rent Virginia Ave property		
2 mos.	120.00	
George Douillard note	800.00	
Stadelman note	200.00	
Homestead	1000.00	
Rent from Glendale property	140.00	
	<hr/>	
	3,570.00	3,570.00
	<hr/>	<hr/>
		\$21,470.00

\*       \*       \*       \*       \*       \*       \*       \*

Paid out:

Cash to the Estate	\$ 4764.66
1732 S. Vermont Ave	375.00
Inheritance tax	373.83
Vermont Ave tax	375.00
2 payments @ \$50.00	100.00
Net purchase price on Virginia Ave	1000.00



2nd payment on mortgage on " "	1000.00
3rd payment on mortgage on Virginia Ave	1000.00
Cost building cottage rear of "	1700.00
Division of Virginia Ave house	1000.00
Furniture for cottage (rear)	500.00
3 incinerators	100.00
Down payment on Glendale property	1750.00
Roofing	\$150.00
Painting inside	175.00
Heater and sink	125.00
George Douillard cottage	1500.00
"    "    lot \$501; and car \$90.00	591.00
"    "    clothes and food	100.00
<hr/>	
Carried forward	18009.49
	[111]
Paid out: Brought forward	\$18009.49
Repaid bank	1000.00
Loan to Stadelman	375.00
Tax on Glendale property 1/2 year	40.00
Tax on Virginia property 1½ yr	240.00
Insurance on Virginia Ave property	13.00
"    "    Glendale property	13.00
Depositions in Douillard vs Woodd	100.00
Briefs and appeal	300.00
Living expenses and several trips to S F etc	1379.51
<hr/>	
	\$21470.00

U. S. District Court No. 44032B. Trustee's Exhibit No. 1. Filed April 5, 1946. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Apr. 12, 1948. Edmund L. Smith, Clerk. [112]

## [TRUSTEE'S EXHIBIT NO. 2]

[Hearing of April 5, 1946]

Receipts of Melanie D. Woodd from Estate of Emily S.

Donahue, Dec.

From 1824 S Vermont, Sales price net	\$6400.00
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From 1732-34 S Vermont (foreclosed)	0
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Special legacy	10000.00
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Executrix commission	880.00
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Rents from Sept. '39 to Apr. '40

on Glendale property	245.00
----------------------	--------

Rents from Aug. '39 to Apr. '40

on Virginia Ave property	480.00
--------------------------	--------

Selling price of George Douillard place	800.00
---	--------

Cash on sale of 1160 N Hobart Blvd to

F Gramer Yarbrough et ux.	150.00
---------------------------	--------

16 mos. of payments of Yarbrough

Dec. '38 to Apr. '40	160.00
----------------------	--------

Rents on Virginia Ave cottage

June '39 to April '40	275.00
-----------------------	--------

Total

---

 \$19390.00

*	*	*	*	*	*	*	*
---	---	---	---	---	---	---	---

## Expenditures:

Cash paid in re settlement of estate	\$ 4764.66
--------------------------------------	------------

Inheritance tax	375.00
-----------------	--------

Cost of building cottage at rear of

Virginia Ave property	2000.00
-----------------------	---------

Cash remodeling Virginia Ave into duplex	1000.00
--	---------

Purchase price of Virginia Ave property	3000.00
---	---------

Moving one and building 2 garages	400.00
-----------------------------------	--------

Furniture cost Virginia Ave duplex	1000.00
------------------------------------	---------

"        "        "        "    rear cottage	500.00
--	--------

Roof on Glendale Ave property	150.00
-------------------------------	--------

Purchase of Glendale Ave property pay't	1750.00
---	---------

Remodeling Glendale property, sinks	75.00
“ “ heater \$40, painting \$175	215.00
“ “ property, incinerator cost	25.00
Cost of automobile for Louis Douillard	600.00
“ “ “ “ Geo. Douillard	90.00

---

\$15944.66

[113]

Brought forward	\$15,944.66
Cost of cottage and lot for George Douillard	2,001.00
Taxes 1940 on Glendale and Virginia property	120.00
Building room for Louis Douillard	250.00
7 payments on encumbrance on Virginia Ave property	260.00
6 “ “ “ “ Glendale Ave property	180.00
2 payments on property sold to Yarbrough before sale	100.00

---

Total \$18,875.66

Receipts \$19,390.00

Expenditures \$18,875.66

---

Remainder \$ 414.34

The above remainder was used for living expenses and costs of appeal in the case of Emile A. Douillard et al., Plaintiffs, vs. Melanie D. Woodd, Defendant, No. 435718 Superior Court, Los Angeles Co.

U. S. District Court No. 44032-B. Trustee's Exhibit No. 2. Filed April 5, 1946. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Apr. 12, 1948. Edmund L. Smith, Clerk [114]



[TRUSTEE'S EXHIBIT NO. 3]

[Hearing of December 23, 1946]

SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES

[Illegible] 19.....

Credit Escrow No. [Illegible]

Cash S. F. N.—Escrow Funds

Checks for collection:

On ..... [Illegible] ..... \$ [Illegible]

..... [Illegible] .....

Maker ..... [Illegible] .....

Indorser .....

Received above from

TOTAL \$ [Illegible]

..... [Illegible] .....

To be used in accordance with written instructions in  
said escrow.

This Bank in receiving notes, drafts, checks and other items for collection, will transmit the same in the usual manner for collection, either to the bank on which the same are drawn, or to such bank or persons as it may deem reliable, with the express understanding that the same is done solely for the account and convenience of the depositor, and that this Bank shall in no way be liable for default of any such bank, person or sub-agents, or for loss in transit, or for any cause whatever, until the proceeds in actual cash shall come into its possession.

Fifth &amp; Spring Office Branch

By H. G. Yohler

(This space for bank use only)

Date received .....

Teller

SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES

January 11, 1946

Credit Escrow No. 1-29015-D

Cash S. F. N.—Escrow Funds

Checks for collection:

On Calif. Bk. .... \$2,350 00

Cashiers Check

Maker .....

Indorser .....

Received above from

TOTAL \$2,350 00

A. P. Garnier

To be used in accordance with written instructions in  
said escrow.

This Bank in receiving notes, drafts, checks and other items for collection, will transmit the same in the usual manner for collection, either to the bank on which the same are drawn, or to such bank or persons as it may deem reliable, with the express understanding that the same is done solely for the account and convenience of the depositor, and that this Bank shall in no way be liable for default of any such bank, person or sub-agents, or for loss in transit, or for any cause whatever, until the proceeds in actual cash shall come into its possession.

Fifth & Spring Office Branch

By B. Tisdale,

(This space for bank use only)

Date received .....

Teller

2317 5-44\* 100 15Y

[Stamped]: 1 BOLSON S.F.N.B.

## [BACK OF CHECK]

[Written]:

Daniel A Knapp

Myra C Knapp

[Stamped]:

The Farmers and Merchants National Bank of Los Angeles, Calif.

Jan 30 1946

Pay to the Order of any Bank or Banker or through Los Angeles Clearing House 1

## [FACE OF CHECK]

16-4 12

Fifth & Spring Office  
SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES  
502 South Spring

No. 108217

Los Angeles, January 28, 1946

Pay to the Order of Daniel A. Knapp.....\$1200.00

The sum of \$1200 and 00 Cts      Dollars

41 Savings

Payment Under Escrow No. 1-29015-D

by [Signature illegible]

Authorized Signature

Escrow Check [115]



[BACK OF CHECK]

[Written]:

Anna L. Hovey

M. L. Hovey

[Stamped]:

91 Washington & Vermont Branch 91

16-276

Feb 1 1946

Pay to the Order of any Bank or Banker or through  
Los Angeles Clearing House

All Prior Endorsements Guaranteed

Security-First National Bank

16-3 of Los Angeles 16-3

[FACE OF CHECK]

16-4 12

Fifth & Spring Office  
SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES  
502 1/2 South Spring

No. 108216

Los Angeles, January 28, 1946

Pay to the Order of

M. L. Hovey and Anna L. Hovey.....\$1051.94

The sum of \$1051 and 94 Cts      Dollars

Payment Under Escrow No. 1-29015-D

by [Signature illegible]

Authorized Signature

Escrow Check

3207 10-43\* 50 P.S.

SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES

BENEFICIARY'S STATEMENT  
(For Bank or F.H.A. Loan)

Los Angeles, California, January 4, 1946

Security-First National Bank of Los Angeles  
Fifth and Spring Office

Your Escrow No. 1-29015-D

Attention: H. A. Dohlen, Escrow Dept.

We hold a \$750.00 promissory note executed by M. L. Hovey, Anna L. Hovey & Melanie D. Woodd, dated  
filed for record November 28, 1945  
August 2, 1945, secured by a Trust Deed / recorded in  
Book....., Page....., of Official Records of.....  
.....County, California. Said note is due and pay-  
able monthly in installments of \$20. each (interest in-  
cluded) on the 15th day of each and every calendar  
month commencing September 15, 1945, and continuing  
and  
until said principal / interest have been paid.

(If F.H.A. Loan) The last gross monthly payment,  
which amount is subject to change, was as follows:

Mortgage Insurance Premium	. . . . .	\$.....
Fire Insurance Premium	. . . . .	\$.....
Taxes and Assessments	. . . . .	\$.....
Principal and Interest	. . . . .	\$.....
Total Present Gross Monthly Payment	. . . . .	\$.....

The funds now impounded by the undersigned are as follows:

(For Taxes and/or Assessments, etc. . . .	\$.....
(For Fire and/or Other Insurance . . .	\$.....
((If F.H.A. Loan) For Mortgage	
Insurance . . . . .	\$.....

The unpaid principal balance of said obligation, is \$670.00. Interest on said note is adjusted to accrue from December 28, 1945. The rate of interest is 6% per annum, payable monthly.

(If F.H.A. Loan) The Mortgage Insurance Premium on the basis of \$.....per annum has been paid by the undersigned to the Federal Housing Administration for insurance to....., 19..... A bonus of \$..... (1% of original amount of the loan) has accrued as a result of an excess payment of more than 15% of the original amount of the loan having been paid in one year. This bonus is not payable until the loan is paid in full.

We enclose

- (1) Policy No. D 61231 of Milwaukee Mechanics' Insurance Company for \$2000. exp. 8-14-46.
- (2) Guaranty form in duplicate, original to be signed by new owners and returned to us.

### INSTRUCTIONS

1. Please acknowledge receipt of this statement and inclosures on the copy of this statement and return the copy to us at once.
2. At completion of your escrow, return all fire insurance policies to us without alteration excepting transfer into names of new owners (if sale) in the manner in which title is vested. Second mortgage clause may be



added provided such clause recites that rights of junior encumbrancer are subject to rights of this Bank under its loss payable clause.

3. At completion of your escrow, advise us of name and address of new owners and/or junior encumbrancers and forward to us your check for \$2.50 to cover our fee in this matter.

In reply address Trust Loan Division Branch, referring to Loan No. SS-1859/Rel 9.

Attention of A. C. Dick.

SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES

Prepared by B. Kurt.

Checked by Sandborgh.

By A. C. Dick

Authorized Signature

Receipt of a copy of this statement is acknowledged  
....., 19.....

.....

.....[116]

(Prepare in triplicate—two copies to be forwarded—third copy to be retained in loan file.)

# SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

## Escrow Instructions Buyer

Buyer &amp; Seller

Escrow No. 1-29015-D

December 27, 1945

To Security-First National Bank of Los Angeles

1. I will hand you \$2400.00

2. \_\_\_\_\_

3. \_\_\_\_\_ MEMO.

4. \_\_\_\_\_ Paid outside of Escrow..... \$.....

5. \_\_\_\_\_ Cash through Escrow ..... 2400 00

6. \_\_\_\_\_ Encumbrances of Record..... 600 00

7. \_\_\_\_\_ New Encumbrances ..... \_\_\_\_\_

8. \_\_\_\_\_ Total consideration..... 3000 00

9. and any additional funds and instruments, required  
 10. from me to enable you to comply with these instruc-  
 11. tions, which you are to use provided on or before  
 12. February 11, 1946, instruments have been filed for  
 13. record entitling you to procure.....

Standard Owner's or Joint Protection policy of title  
 insurance, with title company liability for.....the  
 amount of total consideration on real property in  
 the County of Los Angeles State of California,  
 viz: Lot 11 of Tract 314.....

12. \_\_\_\_\_

13. \_\_\_\_\_

14. \_\_\_\_\_

15. \_\_\_\_\_

16. \_\_\_\_\_

17. as per map recorded in Book 14, Pages 122-123, of

18. Maps.....in the office of the Recorder of said County,  
 showing Title vested in A. P. Garnier, a single man.

19. \_\_\_\_\_

20. Free of encumbrances except: Second installment
  21. of Taxes for fiscal year 1945, 1946, and taxes
  22. which are not yet due; including personal property
  - taxes of any former owner, if any; also including
  - levies of any of those special districts approved
  - herein, payment of which is included therein and
  - collected therewith.
  23. Covenants, conditions, restrictions, reservations,
  - rights of way, easements and the exception of
  - water on or under said land, now of record, if any.
  24. ....
  25. ....
  26. ....
  27. Mortgage or Trust Deed securing an indebtedness
  28. as per its terms, now of record, Lender's statement
  29. to show an unpaid balance of principal of \$600.00,
  - but if same should show to be more or less than said
  - amount, then you are to keep the total consideration
  - the same as shown above, by accordingly adjusting
  - the cash through escrow.....
  30. ....
- \* \* \* \* \*
- [117]

(Page Two)

68. Affix \$2.75 U. S. R. Stamps on deed, to be paid
- by Buyer.
69. The following adjustments are required in this
- escrow:
70. Interest on Mortgages and/or Trust Deeds of
71. record and any funds shown impounded for future
- payments of taxes, insurance, etc., or Mortgage
- insurance premium paid F.H.A. during past 12
- months, based on Beneficiary's statement to close
- of escrow.



72. Interest on new encumbrances by endorsements on notes to none.
73. Taxes, including all items appearing on tax bill
74. except taxes on personal property not conveyed through this escrow, to close of escrow based on latest tax statement in your possession.
75. Rentals on basis of statement furnished by seller,
76. to close of escrow, and you are to consider on
77. basis of said rent statement, that seller will collect all rents which fall due prior to the close of this escrow, unless he instructs you in writing to the contrary. No adjustment against buyer on uncollected rentals Statement: \$35.00 per mo. paid to 1/9/46.
78. ....
79. ....
80. Premium on.....Fire Insurance Policies to
81. Close of escrow on building situated either on prop-
82. erty described above or on premises known as No. 1255 South Glendale Avenue, Glendale, California. You may assume that premiums on said policies have been paid and that the policies have not been hypothecated.

Make prorations on basis 30-day month. "Close of escrow" shall mean the day papers are filed for record. Make disbursements by your check. Mail fire insurance policies to holder of first encumbrance, if any. Mail title policies to holder of first encumbrance being recorded concurrently herewith, if any, or one of record on which substitution of liability is being made, if any. Other documents and checks in my favor to be mailed to my

address below. If title policy is to be obtained, procure it from any title company operating in county where property is located, subject to exceptions and conditions contained in said company's regular printed form.

I agree to pay on demand for recording deed, mortgage clause on insurance, filling in Trust Deed, filling in, notarizing and recording any other documents necessary on my part, and buyer's escrow fee as charged Buyer to pay all charges and those on lines 101-103 below.

Grantor agrees to clear property being conveyed, before delinquency, of any tax on property not included herein. You are not to be concerned with same.

It is satisfactory should property described herein lie within any of the following Municipal Improvement Districts: Avalon No. 1, Beverly Hills Nos. 1, 2, 4 and 5, Culver City Nos. 1, 2, 3 and 5, Glendale Nos. 3, 4 and 7, Huntington Park No. 3, Inglewood Nos. 1 and 2, Pasadena No. 2, Santa Monica No. 1, Vernon Nos. 1 and 2 and Los Angeles Nos. 2, 9, 11, 17, 18, 19, 20, 22, 23, 27, 31, 36, 42, 45, 47 57 58 60, 68, 69 and 73. No adjustment is required in connection with same. Should the title company to which the order for the assurance of title is given show that said property lies within a Mattoon or other special assessment district, not approved by me, you are not to use said money and/or Instruments or complete the escrow.

If the conditions of this escrow have not been complied with at the time provided herein you are nevertheless to complete the same as soon as the conditions (except as to time) have been complied with, unless I shall have made written demand upon you for the return of money and/or instruments deposited by me.

You shall be under no obligation or liability for failure to inform me regarding any sale, loan, exchange, or other transaction, or facts within your knowledge, even though same concern the property described herein, provided they do not prevent your compliance with these instructions, nor shall you be liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited, nor as to identity, authority, or rights of any person executing the same. Your liability as escrow holder shall be confined to the things specifically provided for in my written instructions in this escrow.

In the event conflicting demands are made or notices served upon you with respect to this escrow, the parties hereto expressly agree that you shall have the absolute right at your election to do either or both of the following things: Withhold and stop all further proceedings in and performance of this escrow, or file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves. In the event such interpleader suit is brought, you shall ipso facto be fully released and discharged from all obligations to further perform any and all duties or obligations imposed upon you in this escrow, and the parties jointly and severally agree to pay you all costs, expenses, and reasonable attorneys' fees expended or incurred by you, the amount thereof to be fixed and a judgment thereof to be rendered by the court in such suit.

All parties further agree, jointly and severally, to pay on demand, as well as to indemnify and hold you harmless from and against all costs, damages, judgments, attorney's fees, expenses, obligations and liabilities of every kind



or nature suffered or incurred in connection with or arising out of this escrow.

Buyer's Signature.....

Address .....

(City)

Phone.....

Buyer's Signature   A. P. Garnier

Address   4057 Beverly Blvd., Los Angeles 4, Calif.

(City)

Phone   NO. 22995

SELLER

December 27, 1945.

83.   The Foregoing Terms, Conditions and/or Instruc-  
84.   tions Are Hereby Concurred in, Approved and  
85.   Accepted. I will hand you all instruments and  
86.   money necessary for me to comply therewith, in-  
87.   cluding a deed of the property described, executed  
88.   by M. L. Hovey and Anna L. Hovey, husband  
89.   and wife which you are authorized to deliver  
provided you hold in this escrow for the account of  
the parties executing said deed.....

..... the money.....

(Use this space only if money is to be payable to others than grantors)  
and instruments deliverable to be under these in-  
structions. When property being conveyed is held  
in Joint Tenancy any cash derived therefrom in this  
escrow shall be Joint Tenancy funds. Pay at close  
of escrow any encumbrances necessary to place  
title in the condition called for and the following:

90.   .....

91.   Pay commission of none to.....

92. (Real Estate Broker's License No.....),  
whose address is.....
93. The Seller authorizes you to pay Daniel A. Knapp,  
94. 424 Black Bldg., 4th and Hill Streets, Los Angeles,  
the sum of \$1200.00.
95. ....
96. ....
97. ....
98. ....
99. ....
100. You will, as my agent, assign any fire and other  
insurance of mine handed you or that Beneficiaries  
inform you they hold.
101. I agree to pay on demand charges and expenses  
102. incurred by you for me, including charges for title  
103. assurance, for sending in offset statements and  
beneficiaries' statements and/or demands, convey-  
ancing charges, recording charges including the  
recording of purchase price encumbrances, transfer  
of fire insurance if prorated, and seller's escrow  
fee as charged Buyer to pay all charges.
104. Credit balance to.....account No.....in name  
105. of ..... or.....  
in your.....Branch.

Seller's Signature.....

Address.....

(City)

Phone.....

Seller's Signature M. L. Hovey

Address 1675 West Washington Blvd., Los Angeles 7

(City)

Phone PA. 0229. [118]

SECURITY-FIRST NATIONAL  
BANK OF LOS ANGELES

Escrow Instructions

Buyer

Buyer & Seller

Escrow No. 1-29015-D

December 27, 1945

\* \* \* \* \*

[Escrow Instructions same as instructions on pages 101 to 107 of Transcript of Record with exception of the following:]

\* \* \* \* \* [119]

Buyer's Signature [No Signature]

Address 4057 Beverly Blvd., Los Angeles 4, Calif.  
(City)

Phone NO. 22995

\* \* \* \* \*

Seller's Signature X Anna L. Hovey

Address 3327 Hollydale Dr.

(City)

Phone.....

Seller's Signature M. L. Hovey

Address 1675 West Washington Blvd., Los Angeles 7  
(City)

Phone PA. 0229. [120]



2244 2-45\* 15Y (30Y if F.H.A.)

SECURITY-FIRST NATIONAL BANK  
OF LOS ANGELES

## ESCROW SETTLEMENT SHEET

Check if F.H.A. ☐ Escrow No. 1-29015D

Name Hovey

Name Garnier

Address

Address

(Seller/Borrower)

Sale

(Buyer)

## SETTLEMENT

Debits	Credits		Debits	Credits
		Deposit		2 450
	2 400	Demand for Deed Note	2400	
70		Adj. on Trust Deed from \$600 to \$670.		70
1 56		Interest \$670 @ 6% 12/28/45 to 1/12/46		1 56
		Mtg. Ins.		
2 59		Taxes 2½ \$42.42 6 Mo. 1/1/46-1/12/46		2 59
31 50		Rents \$35 Mo. 1-12-46 to 2-9-46		31 50
		Insurance Prin \$13 3y 1/12/46 to 8/14/46	2 55	
		Commission None		
1 200		Payoffs Daniel A. Knapp		
		Beneficiary's Fee for Furnishing Demand and/or Statem't	2 50	
		Impounded: Mtg. Ins. Taxes Fire Ins.		
		Bldg. A/C Mech. Lien Rpt. Record N/C		
		Lot Inspection		
		Title Co.'s Charge for Assurance of Title	27 50	
		Reconveyance Fee		
		Revenue Stamps	2 75	
		Recording Deed	1	
		Recording Trust Deed		
		Recording Recon.		
44 96		Recording		
		Taxes 1st ½ 42.42 plus \$2.54 Pen (Paid)		
		Special Assessments		
		Tax Service		
		Insurance { Add'l. Coverage Ext'd. Coverage		
		Transfer	25	
		Mtg. Clause		
		Real Estate Loan Fee		
		Esc. Fee-Sale Pur. Loan Exch.	18	
		Drawing Deed	1 50	
		Drawing Trust Deed		
		Drawing		
		Notary		
		Deposited Acct. of—		
1 051 94		Check	Bal. Due Bank	99 60
2 402 55	2 402 55		2 555 65	2 555 65

## LEDGER

Date		Dr.	Cr.	Balance
Dec 24 '45	A. P. Garnier		100	100
Jan 11 '46	A. P. Garnier		2 350	2 450
Jan 28 '46	Memo	2 405 04		44 96
Feb 6 '46	Memo	44 96		C

## DISBURSEMENTS

Date	Check No.		Amount
Jan 28 '46	108215	A. P. Garnier	99 60
Jan 28 '46	108216	M. L. Hovey & Anna L. Hovey	1 051 94
Jan 28 '46	M	Trust Loan Div Head Office	2 50
Feb 6 '46	108269	Tax M. L. and Anna L. Hovey	44 96
Jan 28 '46	108217	Daniel A. Knapp	1 200
Jan 28 '46	M	Acct. Title Ins. & Tr. Co. Order No. 2316087	31 25
		Acct. Co. Order No.	
		Recon. Fee	
Jan 28 '46	M	Insurance	25
		Real Estate Loan Fee	
		Tax Service	
		S.F.N. Bldg. Loan Acct.	
		Suspense Acct.—Impounded Funds	
Jan 28 '46	M	Escrow Fee, Drawing Documents & Notary Fee	19 50
TOTAL			2 450

Settlement Date  
 Made by Wilson 1/23/46  
 Examined by Dahlen  
 Recorded 1/12/46  
 REMARKS  
 Endorse interest on  
 \$..... note to  
 .....  
 advise seller to bring  
 in receipted tax bill for  
 1st Inst 1945-6 taxes so  
 that we can refund the  
 \$44.95 held for said taxes

## DISPOSITION OF DOCUMENTS

Mail	Hold	Documents	Name and Address
		Assurance of Title	
		Fire Insurance	
		New Note	
		Tax Receipt	

## SALE

Paid outside of Escrow	
Cash through Escrow	2 400
Encumbrances of Records	600
New Encumbrances	
Total consideration	3 000

## WOODD, MELANIE D.

Account No. 219672

Date	Withdrawn	Interest	Deposited	Balance
Aug 15 '39		13	25	25
Aug 21 '39		09	19 75	44 95
Sep [?]		1 10	900	944 95
Sep [?]			19 75	964 50
Sep 19 '39 NE	75			889 50
Sep 25 '39 NE	100			789 50
Sep 29 '39 NE	89 50			700
[?]			19 75	719 75
Oct 16 '39 NE	50			669 75
Oct 18 '39			9 75	679 50
Oct 23 '39	50			629 50
Oct 26 '39	25			604 50
Nov 6 '39	300			304 50
Nov 13 '39	4 50			300
Nov 15 '39			19 75	319 75
Nov 18 '39			9 75	329 50
Dec 15 '39			9 75	339 25
Dec 19 '39			19 75	359
Dec. 31, 1939 Interest			1 32	360 32
Jan 12 '40	35			325 32
Jan 16 '40			9 75	335 07
Feb 5 '40	50			285 07
Feb 6 '40			19 65	304 72
Feb 13 '40	154 72			150
Feb 13 '40			19 75	169 75
Feb 15 '40			9 75	179 50
Feb 23 '40	5			174 50
Feb 26 '40	74 50			100
Mar 14 '40	50			50
Mar 14 '40			19 75	69 75
Mar 16 '40	69 75			

Forward



Security Office Account No. 585201

## MELANIE D. WOodd

Date	Withdrawn	Interest	Deposited	Balance
Sep 22 '38		02	5	
Sep 22 '38		03	9 15	14 15
Sep 27 '38		1 50	400	414 15
Oct 19 '38	Douillard		9 75	423 90
Nov 3 '38			199 94	623 84
Nov 19 '38	"	1 55	9 75	633 59
Nov 23 '38	15			618 59
Nov 26 '38	200			418 59
Dec 12 '38	15			403 59
Dec. 31, 1938 Interest			1 55	405 14
Feb 11 '39	50			355 14
Feb 17 '39	40			315 14
Mar 10 '39	15 14			300
Mar 13 '39			50	350
Mar 14 '39	30			320
Mar 20 '39	50			270
Mar 28 '39	15			255
Apr 5 - '39	40			215
Apr - 8 '39			6 790 55	7 005 55
Apr 10 '39	6 805 55			200
Apr 12 '39	200			
				None

Return To  
Records Storage Warehouse  
Los Angeles, California

Forward

Account No. 50917

Melanie D. Woodd  
 Western & Santa Monica

Date	Withdrawn	Interest	Deposited	Balance
May 22 1939			500	500
May 23 1939			4 000	4 500
Jun 3 1939			1 000	5 500
Jun 5 1939	100			5 400
Jun 10 1939	50			5 350
Jun 14 1939	50			5 300
Jun 16 1939	200			5 100
Jun 23 1939	5 100			
Reopened				
Jul 18 1939			2 000	2 000
Jul 18 1939	125			1 875
Jul 27 1939	175			1 700
Jul 31 1939	100			1 600
Aug 9 - 1939	50			1 550
Aug 10 1939	150			1 400
Aug 17 1939	50			1 350
Aug 18 1939	150			1 200
Aug 28 1939	100			1 100
Sep 8 1939	100			1 000
Sep 15 1939	1 000			

Forward

2399\* K.I. Term Savings Ledger Card—Security-First National Bank of  
 Los Angeles

U. S. District Court No. 44032-B. Trustee's Exhibit  
 No. 3. Filed Dec. 23/46. Hubert F. Laugharn,  
 Referee.

[Endorsed]: Filed April 12, 1948. Edmund L. Smith,  
 Clerk. [124]

## [TRUSTEE'S EXHIBIT NO. 1]

[Hearing of January 20, 1948]

424108

251455

FRED W. HEATH

Attorney at Law

424 Black Building

MIchigan 6929

So Pasadena

Los Angeles, Calif., Apr. 22d 43.

Dear Edna:

Every night when I go out to my lonely bed I feel less assurance than I did the previous nite that I will be here when morning comes, so just to be prepared

I want you to have whatever there is belonging to me when I die.

I make no provision for the children as I know you will.

Mrs. Wilson is about paid up. I get 10% of the amt for which she sells her house, less about \$1,000 advanced.

Santa Rosa Mining Co. owes me \$5000

I have a half interest in any money collected on the Lundquist Kruse judgment, about \$2500.00.

I have a half int in the Currie Walterson judgment now about 8,000.00 due.

Mrs. Woodd owes me about \$1,000 represented in the Hovey vs Woodd judgment.

The balance due on my Morales Mtg note about \$125. The Morales Mtg note is all mine. [125]



108-A

The 2.50 gold picce I expected to go to Katherine;

Roland H. Wiley, Las Vegas Atty has a new set of Nevada Stats worth \$50 which belongs to me. No strings on it.

Other odds and ends amount to practically nothing.

If I should forget to wake up some morning it will be a nice way out as I am burden enough while I am able to be my own nurse & valet.

Don't spend any money on a funeral buy war bonds instead.

I want you to execute my will, without bond.

Dated April 22, 1943.

Fred W. Heath  
Testator

251455

Admitted to Probate Feb. 14, 1946. Attest: J. F. Moroney, County Clerk; by Ed Roberts, Deputy.

Filed Jan. 23, 1946. J. F. Moroney, County Clerk; by H. L. Doyle, Deputy. [126]

The document to which this certification is attached is a full, true and corect copy of the original on file and of record in my office: Attest: Dec. 27th, 1946. J. F. Moroney, County Clerk and Clerk of the Superior Court of the State of California in and for the County of Los Angeles. By J. M. Garland, Deputy.

U. S. District Court No. 44032-B. Trustee's Exhibit No. 1. Filed January 20, 1948. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Apr. 12, 1948. Edmund L. Smith, Clerk. [127]

[TRUSTEE'S EXHIBIT NO. 1]

[Hearing of February 6, 1948]

## GRANT DEED

M. L. Hovey and Anna Hovey, husband and wife, of Los Angeles, California, in consideration of Ten Dollars, and other valuable Considerations, receipt whereof is hereby acknowledged,

Do Hereby Grant To Fred. W. Heath, a married man, of Los Angeles, California, as his sole and separate property and estate, the real property in the City of Los Angeles, County of Los Angeles, State of California, described as;

The South one hundred eight feet (108) of Lot eight (8) of the Zahn Tract, as per Map recorded in Book 12, at page 127 of Maps, in the office of the Recorder of said Los Angeles County. Subject, however, to easements, and restrictions of record, and to the unpaid balance of a trust deed note held by Security-First National Bank, now of record.

Also Lot eleven (11), in Tract No. three hundred fourteen (314) as per map thereof recorded in Book 14, pages 122 and 123 of Records of Los Angeles County.

Subject, however, to easements and restrictions of record, and to the unpaid balance of a trust deed note held by Security-First National Bank, now of record.

To Have and to Hold, unto said Grantee, his heirs and assigns, forever.

October

Witness Our Hands this 14 day of ~~September~~, 1943.

M. L. Hovey

Anna Hovey [128]

ACKNOWLEDGEMENT

State of California

County of Los Angeles—ss.

On this 14 day of October 1943 before me, a Notary Public in and for said County, duly commissioned and sworn, residing therein, personally appeared M. L. Hovey and Anna Hovey, husband & wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

Witness my hand and Notarial Seal the date hereinabove written.

[Seal]

Florence A. Bartels,

Notary Public.

My commission expires 3/26/47. [129]

2081

Req

When recorded return to Estate of Fred W. Heath, dec. c/o Daniel A. Knapp 1151 So Broadway Room 744 Los Angeles 15, Calif.

Document No. 2081 Recorded at Request of.....  
Jan 19 1948 21 Min Past 12 M.

Official Records

County of Los Angeles, California

Fee \$..... Folios .....

MAME B. BEATTY, County Recorder

By.....Deputy.



State of California,  
County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy of the original instrument filed for record 1-19, 1948 Document No. 2081.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, this 4th day of Feb., 1948.

MAME B. BEATTY, County Recorder  
By E. Post, Deputy.

U. S. District Court No. 44032-B. Trustee's Exhibit No. 1. Filed Feb. 6/48. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Apr. 12, 1948. Edmund L. Smith, Clerk. [130]

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[BANKRUPT'S EXHIBIT NO. 1]

[Hearing of April 5, 1946]

In the Superior Court of the State of California, in and for the County of Los Angeles.

Emile A. Douillard, Plaintiff, vs. Lloyd C. Smith, Florence Smith, Melanie D. Woodd, M. L. Hovey, Daniel A. Knapp and Fred W. Heath, Defendants. No. 486331.

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

This cause came on regularly for trial on the 19th day of April, 1944, before the Court, Department 17, sitting without a jury, a jury having been waived by both plaintiff and defendants, Honorable Carl A. Stutsman, Judge pre-

siding; plaintiff being present in Court and being represented by J. M. Clements, Esq. and Thomas Higgins, Esq. By James M. Clements, Esq. and Robert E. Austin, Esq., and John N. Helmick, Esq., by Robert E. Austin, Esq.; defendant Melanie D. Woodd appeared in propria persona; defendants Lloyd C. Smith and Florence Smith were dismissed from the action and did not appear at the trial; defendants M. L. Hovey, Daniel A. Knapp and Fred W. Heath were present in person and represented by Daniel A. Knapp, Esq. and Fred W. Heath, Esq.; the trial not having been concluded on April 19th, 1944, was continued to April 20th, 1944, and the trial proceeded, and not having been concluded on April 20th was continued to April 21st, 1944, on which day the trial was concluded; and evidence both oral and documentary having been introduced and the cause submitted for decision, the [131] Court having considered the evidence offered by plaintiff and by defendants, and being fully advised in the premises, now makes its Findings of Fact as follows:

## FINDINGS OF FACT

### I.

That it is true that on April 25th, 1940, plaintiff herein obtained a several judgment against Melanie D. Woodd, one of the defendants herein, for the sum of \$2500.00, in action No. 435718 in the Superior Court of the State of California, in and for the County of Los Angeles.

### II.

That it is true that on or about October 15th, 1942, execution was levied on said judgment by the Sheriff of said Los Angeles County, on Lot 11, Tract 314, as per map thereof recorded in Book 14, Pages 122 and 123 of

Maps, in the office of the County Recorder of said Los Angeles County, being located in the City of Glendale, County of Los Angeles, State of California.

### III.

That it is not true that on said October 15th, 1942 the said Melanie D. Woodd was then the owner of said property; and the Court finds that she was not the owner of any interest therein, other than a right of redemption pursuant to Sections 701-702 Code of Civil Procedure.

### IV.

That *it true* that on March 15th, 1943, the said Sheriff made a sale of all of the right, title and interest of Melanie D. Woodd in said property to the plaintiff herein.

### V.

That the allegations of Paragraph III of plaintiff's second amended complaint are true.

### VI.

That it is not true that the defendants Woodd, Hovey, Heath [132] and Knapp conspired together, or with each other, or at all, as alleged in Paragraph IV of the second amended complaint, to so cloud and encumber, or cloud or encumber, the title to said property in fraud of the rights of said plaintiff.

That it is not true that the defendants Hovey, Heath and Knapp, or any one or more of them, for the purpose of carrying out any conspiracy, or for the purpose of defrauding plaintiff, filed the said action No. 450821 in the Superior Court of the State of California, in and for the County of Los Angeles, entitled "M. L. Hovey, Plaintiff, vs. Melanie D. Woodd, Defendant."



## VII.

That the allegation is not true as set forth in Paragraph IV of said second amended complaint, wherein it is alleged that the allegation of indebtedness of Melanie D. Woodd to defendants Heath and Knapp, contained in the complaint in action No. 450821, was false.

That it is true that plaintiff M. L. Hovey in said action was the assignee of Fred W. Heath and Daniel A. Knapp, and it is true that nothing had been paid on said indebtedness and that there were no credits in favor of defendant Melanie D. Woodd, the defendant therein named.

## VIII.

The Court finds that E. D. Martindale did not join the alleged or any conspiracy whatever in acting as attorney for Melanie D. Woodd the defendant in said action, as alleged in Paragraph V of said second amended complaint, or at all.

That as to the allegation in Paragraph V of said second amended complaint that the said Melanie D. Woodd did not owe anything to defendants Heath and Knapp prior to the filing of said action No. 450821, the same is untrue.

That it is not true that the judgment against Melanie D. Woodd and in favor of defendant M. L. Hovey, was procured by said defendants for the purpose of delaying or defrauding plaintiff out of the collection of his judgment. [133]

## IX.

That it is true that an attachment was levied in the suit of Hovey vs. Woodd, No. 450821, on the property described in Finding II hereof on April 11th, 1940, and that a sale thereof upon execution issued upon the said

judgment of M. L. Hovey against Melanie D. Woodd was made to defendant Hovey on or about September 8th, 1942.

The Court finds that all the allegations of said second amended complaint other than those hereinbefore referred to in Paragraph VI thereof, are untrue.

#### X.

The Court finds that the allegations of Paragraph VII of said second amended complaint are true.

#### XI.

The Court finds that all the allegations of Paragraph VIII of said second amended complaint are untrue.

#### XII.

The Court finds that defendants did not, nor did any of them, falsely or fraudulently conspire together, or with any other person or persons, for the purpose of hindering or defrauding plaintiff, or clouding plaintiff's title to said property.

#### XIII.

The Court finds that all the allegations of the answers of defendants herein filed, are true.

### CONCLUSIONS OF LAW

As Conclusions of Law from the foregoing Findings of Fact, the Court finds:

#### I.

That there was no fraud in law chargeable against the said defendants or any of them.

II.

That the execution sale in Action No. 450821 conveyed to M. L. Hovey all of the right, title and interest of Melanie D. Woodd [134] in and to the real property described in Paragraph II of the foregoing Findings of Fact.

III.

That plaintiff did not acquire and has not now any right, title or interest in or to said real property.

IV.

That defendants M. L. Hovey, Melanie D. Woodd, Fred W. Heath and Daniel A. Knapp are entitled to judgment against plaintiff for their costs of suit herein.

V.

That said plaintiff is entitled to take nothing by reason of his said second amended complaint.

Judgment is hereby ordered to be entered accordingly.  
Dated: April 1944.

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Judge of the Superior Court

Aug. 17, 1945 aff'd.

U. S. District Court, No. 44032B. Bankrupts Exhibit No. 1. Filed April 5/46. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Apr. 12, 1948. Edmund L. Smith, Clerk. [135]



[Title of District Court and Cause]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 139, inclusive, contain full, true and correct copies of Debtor's Petition; Schedule A-3; Orders of Adjudication and of General Reference; Proofs of Claim of Emile A. Douillard, Frank T. Douillard, Juliette Evans and Raymond F. Puissegur; Referee's Certificate on Review; Petition re Record on Appeal; Order re Record on Appeal; Referee's Supplemental Certificate on Review; Petition to Reopen Bankruptcy Proceedings; Order Reopening Estate for Further Administration; Petition for Order to Show Cause; Order to Show Cause; Answer of Edna D. Heath, etc. et al. to Order to Show Cause and Petition; Memorandum Opinion and Direction to Prepare Findings of Fact and Orders; Objections to Findings of Fact; Findings of Fact and Order; Petition for Review of Referee's Order; Order on Petition for Review of Referee's Order; Notice of Appeal; Cost Bond on Appeal; Substitution of Attorneys; Orders Extending Time to File Record and Docket Appeal; Order Substituting Myra C. Knapp etc. as Party Appellant and Petition therefor; Statement of Points on Which They Intend to Rely on Appeal; Designation of Contents of Record on Appeal; Respondent's Designation of Contents of Record on Appeal; Trustee's Exhibit No. 1 at Hearing of October 3, 1945; Trustee's Exhibits 1 and 2 at Hear-

ing of April 5, 1946; Trustee's Exhibit No. 3 at Hearing of December 23, 1946; Trustee's Exhibits Nos. 1, 2 and 3 at Hearing of January 20, 1947 and Bankrupt's Exhibit No. 1 at Hearing of April 5, 1946 which, together with copy of Reporter's Transcripts of proceedings on October 3, 1945, September 17 and October 16, 1945, December 13, 1946, March 28, April 5, December 12, 16 and 23, 1946 and January 20 and 23, 1947, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$34.20 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 19 day of April, A. D. 1948.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy Clerk

[Title of District Court and Cause]

Before Honorable Hubert F. Laugharn  
Referee in Bankruptcy

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
HAD IN THE ABOVE ENTITLED CAUSE,  
HELD ON SEPTEMBER 17 and OCTOBER 16,  
1945, AT FIRST MEETING OF CREDITORS

Appearances:

Leslie S. Bowden, Esq., 1102 Fidelity Bldg.—MI. 1371,  
Los Angeles, California, for the Trustee, George Gog-  
gin, Esq.

Earl F. Crandell, Esq., 304 South Broadway,—VA.  
3445, Los Angeles, California, for the Bankrupt.

Robert E. Austin, Esq., 215 Stock Exchange Bldg.—  
TU. 7773, Los Angeles, California, for Certain Creditors.

Melanie Douillard Woodd                      September 17, 1945  
First Meeting of Creditors

The Referee: Melanie Douillard Woodd.

Mr. Crandell: Ready.

The Referee: Mr. Goggin will be appointed trustee.

MELANIE DOUILLARD WOODD,  
having been first duly sworn, on oath testified as follows:

Mr. Austin: If the Court please, we have some things  
here we want to file.

The Referee: Do you want to vote for a trustee?

Mr. Austin: If your Honor please, we had no one  
particularly in mind for a trustee and we will leave that  
up to the Court.

The Referee: I will appoint Mr. Goggin, then, and  
he will cooperate with you.

Mr. Austin: That suits us very well.



(Testimony of Melanie Douillard Woodd)

Direct Examination

By Mr. Goggin:

Q. Are you married? A. No, I am a widow.

Q. How long have you been such?

A. Oh, fifteen or eighteen years; since I was thirty-two.

Q. Do you have any children? [2\*] A. No.

Q. You are working at the Fifth Street Department Store? A. Yes sir.

Q. How long have you been employed there?

A. About two and a half years. I work four hours a day at fifty-five cents an hour.

Q. Do you have any other income? A. No sir.

Q. Do you have any real property? A. No sir.

Q. Any interest in any? A. No sir.

Q. Have you ever had? A. No sir.

Q. Do you have any war bonds?

A. What do you mean by "ever had"?

Q. Well, in the past five years have you had any interest in any real property? A. I don't think so.

Q. Do you have any war bonds? A. No sir.

Q. You show these creditors as having obtained a judgment against you. What was the nature of that litigation? A. Which one; there are several?

Q. Well, case No. 435718?

A. Emile A. Douillard? [3]

Q. Yes. A. That is the first one.

By the Referee:

Q. What did that arise out of; just explain it.

A. An oral agreement.

(Testimony of Melanie Douillard Woodd)

Q. For what? What was the background of it? They have a number of judgments against you; what was the agreement about? Why do they contend you owe them money?

A. They said I promised them part of my bequest.

Q. From what estate?

A. From my mother's estate.

Q. When did your mother die?

A. August, 1937.

Q. What did she leave?

A. Well, she left an estate of \$71,000.

Q. Where?

A. In Los Angeles and Manhattan Beach.

Q. She died here? A. Yes sir.

Q. And her proceedings are in the probate court?

A. Yes sir.

Q. Were you the only person who was to inherit the property?

A. No sir. There were two brothers, Emile Douillard and Frank Douillard.

Q. Each a third? [4]

A. No, each a one-fourth; my sister was dead and there were two grown children.

Q. And you were to get out of that something under \$20,000? A. No, it didn't come to \$20,000.

Q. What did it come to?

A. \$10,000 for my share and then a \$10,000 bequest.

Q. And you got \$20,000? A. Yes sir.

Q. When did you get that?

A. I got the \$10,000 in money, with the deductions for the court and all, and with the other I bought a building from my brothers; I paid them \$5,600 out of my \$10,000.

(Testimony of Melanie Douillard Woodd)

Q. When was that? A. In 1937.

Q. What happened to your \$10,000?

A. Well, the \$5600 was in there and then maybe \$500 for court fees and so forth, and then I bought an interest in a seven thousand dollar building on Vermont, for, I think it was \$500, and I had to pay three hundred and something to my brothers.

Q. What happened to the property; did you lose it all? A. Yes sir; I have lost it all.

Q. How was it lost?

A. I owed the attorney fees and they executed on my property. [5]

Q. How long ago?

A. I think in 1943, by sheriff's sale.

Q. And you lost everything? A. Yes sir.

Q. What was this oral agreement?

A. I didn't make it. They said I did and they lost and they took it to the Supreme Court.

Q. What did they say you did?

A. They say I promised to give them one-fourth of that.

Q. And you say you didn't? A. I didn't, no.

Q. It went through the court?

A. Yes. Judge Clark decided against me.

Q. And in the meantime you have lost all of the property? A. Yes sir.

Q. When have you had any assets, money, cash, or anything except your clothing, other than this salary you are earning?

A. I haven't had anything since some time in 1942 or '43; ever since it went into Dr. Hovey's hands.

Q. That is the first time you have mentioned him.

A. He is all through the suit.



(Testimony of Melanie Douillard Woodd)

Q. How long have you been working at this present place?      A. About two and a half years.

Q. What did you do before that? [6]

A. Nothing.

Q. How much do you make now?

A. Fourteen or fifteen dollars a week.

Q. And that is your total support?      A. Yes sir.

Q. Since you went to work there have you had any money, funds or property other than your salary?

A. No sir.

Q. Then that accounts for your last two and a half years?      A. Yes sir.

Q. Do you have any mortgages, bonds or trust deeds or anything of that kind?      A. No sir.

Q. How were you living two and a half years ago?

A. I had rentals there.

Q. And you lost this property?      A. Yes sir.

Q. By foreclosure or sheriff's sale?

A. Sheriff's sale, and then I had a rental off of a piece of property on Hobart Street, and these people took it.

Q. You haven't had a cent coming into your hands for at least two and a half years, other than your salary?

A. That's right, and I haven't worked half of the time; I have been sick and was operated on.

Q. Do you expect to inherit any other property?

A. No sir. [7]

Q. Is anyone holding anything in trust for you?

A. No sir.

(Testimony of Melanie Douillard Woodd)

Q. Because of this litigation did you transfer anything to anyone to hold for you?

A. No sir, and the note I transferred, or the deed, to Dr. Hovey years ago. That is a note that is in litigation now.

Q. Dr. Hovey claims you owe him some money?

A. Yes sir; he has a \$4000 judgment against me. That is between him and the lawyers. I don't know what that is.

Q. Did you ever give a \$4,000 note to him, or give him \$4,000?

A. No, I never had anything to do with Dr. Hovey. He got that from the attorneys.

Q. Did you owe the attorneys \$4,000?

A. Yes sir.

Q. And they assigned to Dr. Hovey?

A. Yes, I guess that is it.

Q. In other words, you had litigation with these attorneys? A. Yes sir.

Q. \$2500 to one and \$1500 to the other?

A. Yes sir.

Q. And they assigned to Dr. Hovey?

A. Yes sir.

By Mr. Goggin:

Q. I notice you paid your attorney \$150 for fees and costs, where did you get that money? [8]

A. A friend loaned me the money.

By the Referee:

Q. Who was the friend? A. Mrs. Gradey.

Q. And you owe her \$150? A. I owe her \$90.

Q. You paid back \$60?

A. No, I didn't get \$60 off of her; I got that from my own salary.

(Testimony of Melanie Douillard Woodd)

Q. You haven't had any other funds except your salary?      A. No sir.

Mr. Austin: Your Honor, I represent the Douillards, Evans and Puissegurs. May I ask some questions?

The Referee: All right.

By Mr. Austin:

Q. Mrs. Woodd, you received at the distribution of your mother's estate, in 1939, a substantial amount of money from your mother?

A. I received \$10,000 less \$500 for the income tax, or whatever it was, and the other was in that property, and you know that.

Q. The suit against you, as the result of this \$7500 judgment, was filed some time in 1939, was it not?

A. Yes sir.

Q. And you then employed Mr. Knapp?

A. And Mr. Heath. [9]

Q. To defend you in that action?

A. That's right.

Q. At the time you had something in the bank?

A. \$59, and you took it.

Q. On the 10th day of April, 1939 you had in the Security-First National Bank \$6,805.55?

A. That's right. I sold the property on Vermont. That is where I got that money.

Q. And on June 20, 1939 you had in the Western Avenue Branch of the Security-First National Bank \$5100, did you not?

A. That money was transferred, \$6500 or what was left, and it was transferred to this other one.

Q. How did you happen to take that money out of the Fifth and Spring Street Branch, on April 10th?

A. Well, you folks had nothing to do with that.



(Testimony of Melanie Douillard Woodd)

By the Referee:

Q. Well, the question is, you had it in the bank—how did you happen to take it out?

A. Because I wanted it closer to my home in Hollywood.

By Mr. Austin:

Q. What did you do with that money?

A. I bought a place on Virginia Avenue, and I cut a house in two, and I built another little house, in the back yard. [10]

Q. What happened to the property?

A. It was taken by Dr. Hovey; sold at sheriff's sale.

Q. How long ago?           A. In March, 1943.

Q. In other words, did you put all of your money into it or did you have any money after you got through developing the property?

A. I might have had \$2,000 and I bought a place in Glendale.

Q. So you lost the first place; what happened to the Glendale property?

A. I lost that too, in the same litigation.

Q. With whom?           A. Dr. Hovey.

Q. You only started out owing \$4000 didn't you?

A. Yes sir.

Q. When he took these properties how much credit did you get?           A. I didn't get any.

Q. It was foreclosed by mortgage or sheriff's sale?

A. Sheriff's sale.

Mr. Austin: To follow the line of questioning suggested by the Court, but not abandoning the other—The suit brought by Dr. Hovey was for services you owed for to Mr. Heath and Mr. Knapp in this suit your brothers brought against you? [11]

(Testimony of Melanie Douillard Woodd)

A. I don't know anything about Dr. Hovey; all I know is I owed the two attorneys. I think Mr. Knapp could tell you.

By the Referee:

Q. When they did take this property away from you on this judgment, did you have any further dealings with them of a financial nature? A. No.

Q. Did they lend you any money?

A. No. I paid for the depositions.

Q. Dr. Hovey took the property and kept it?

A. Yes sir.

Q. You didn't have any agreement with him to get it back? A. No sir.

Q. Or collect the rents or anything?

A. Yes, I was collecting the rents on Virginia Avenue.

Q. Why?

A. Because they allowed me to live there. I had no place to go.

Q. Now you had these judgments against you?

A. Yes sir.

Q. Then in 1943 there was a suit filed, for \$4,000, against you by Dr. Hovey on the attorney's notes?

A. Yes sir.

Q. And you didn't contest that suit, did you? [12]

A. Yes sir.

Q. Did you fight it and say they should not have the judgment?

A. Well, I went to court. The records will show everything.

Q. So then they went ahead, these attorneys of yours and Dr. Hovey, went ahead and sold the property out from under you at sheriff's sale? A. That's right.

(Testimony of Melanie Douillard Woodd)

Q. And made a deal with you to continue to live there and collect the rents?

A. Yes, the Virginia Avenue property. I asked them if they would let me live there.

Q. And they said you could?

A. Yes, for awhile.

Q. And you have lived there ever since?

A. From then to now.

Q. How much rents are collected each year?

A. \$45 a month; \$20 off of the little house and \$25 off of the duplex.

Q. Where do you live?

A. I live in one-half of the duplex.

Q. And you collect the \$45 each month and send it in to them?      A. Yes sir.

Q. And for that you get the \$25 a month place to live? [13]

A. I pay the \$45 to Dr. Hovey, and he, in turn, pays the mortgage on the place. He has the mortgage.

Q. And you take it in to him?      A. Yes sir, I do.

Q. When did you make this deal with him or your attorneys, to live in the property without paying any rent and for the care of the property and collection of the rents?

A. Way back in—well, from the time they sold me out; that was in 1943, I think.

Q. Did they ask you to stay there?

A. No, I did. They didn't ask me to stay there.

Q. What is the property worth now, in your opinion?

A. I don't know; it is awfully run down.

Q. \$10,000?      A. Oh, no.



(Testimony of Melanie Douillard Woodd)

Q. \$8,000?

A. No, maybe \$5,000; it is in bad condition.

Q. What is owing on the mortgage?

A. I don't know now.

Q. What was owing on the mortgage when you lost the property?      A. Near \$2,000.

Q. Is there anything owing now?

A. Yes, I think there is.

Q. What did you give for the property?

A. \$5,000. [14]

Q. How much money did you put into it?

A. I paid \$1,000 down.

Q. No, I mean for improving it.

A. I paid \$1,000 to cut it up and then new plumbing, and the little house cost near \$2,000.

Q. You bought the property for \$5,000?

A. Yes sir.

Q. And you put \$4,000 in it?      A. Yes sir.

Q. That would be \$9,000?      A. Yes sir.

Q. And this property has gone down to where it is only worth \$5,000?      A. Yes sir.

Q. Where is it located?

A. On Virginia and Hobart.

Q. What makes you think it is only worth \$5,000?

A. The grass is all dead and the rain has rained through the houses.

Q. Were you ever able to pay your attorneys anything in cash?      A. No.

Q. You had money in the bank to pay them, didn't you?

A. No; after I bought these houses I had no money.

Q. When did they render the services to you?

A. They started in 1939. [15]

(Testimony of Melanie Douillard Woodd)

Q. When did you get your money?

A. I got my money before that.

Q. And it was all spent?

A. Yes sir. No, I got some money in 1939; that was when I sold the place.

Q. Were you getting all this work done on credit?

A. Yes sir.

Q. Weren't you paying anything as you went along?

A. No sir.

Q. Were they handling it on a contingent basis?

A. No sir.

Q. They were handling it for a fixed fee?

A. Yes sir.

Q. When did they tell you what they would charge you; when they started in?

A. No; he said he thought the case would be nothing at all, they thought it would not stand, and when he saw they were losing, they came to me and said they would have to have some money or something, and I offered—

Q. Was that before the notes were signed?

A. What notes?

Q. You gave them two notes.

A. It was just before Thurman Clark gave his decision, but he was going to give it, and they wanted some sort of protection.

Q. What had they done up to that time; prepared your [16] case and tried it for you? A. Yes sir.

Q. And before the Judge gave his decision they said they wanted some protection? A. Yes sir.

Q. And then you gave them the notes?

A. Yes; I wanted to give them a piece of property, but Mr. Knapp wouldn't hear of it.

(Testimony of Melanie Douillard Woodd)

Q. They had \$4,000 in fees that you should pay up to that time?      A. Yes sir.

Q. What had they done for you?

A. They had prepared the case and prepared the briefs. I can't tell you, but I can bring you the books. It is too much for me.

The Referee: Any other questions?

By Mr. Austin:

Q. Isn't it a fact that you inherited from your mother the property you are living in now, at Virginia and Hobart?      A. No sir.

Q. Who did you buy that from?

A. The Pacific Mortgage Company, Mr. Thirtle.

Q. When did you buy that?

A. In 1939; the latter part of 1938, maybe.

Q. How long have you lived there?

A. Ever since I bought it. [17]

Q. When did you first move into the property?

A. I think 1939.

Q. Where had you lived before that?

A. 1160 North Hobart, right around the corner.

Q. Isn't that on the same corner?

A. No; they touch each other. That is the property my mother left me, and there was a mortgage of \$2400 on that.

Q. How much did you pay for the property you bought from Mr. Thirtle?

A. \$5,000; \$1,000 down and \$40 a month.

Q. When did you make that purchase?

A. In 1939.

Q. Was that before or after the money was distributed to you from your mother's estate?

A. A year and a half after the estate was closed.



(Testimony of Melanie Douillard Woodd)

Q. What did you do with this money you withdrew from the Fifth and Spring Branch of the Security-First National Bank, on April 10th?

A. Is that the \$6500?

Q. Yes.

A. I transferred that to Hollywood. No, I don't know, it seems to me I put something in postal savings.

Q. And didn't you put some of it in the Building and Loan Association?           A. Yes.

Q. So the money you took from the Fifth and Spring Branch [18] of the Security National Bank went into postal savings and the Building and Loan Association?

A. Yes sir.

Q. Then on the 20th of June, 1939, you withdrew \$5100 from the Western Avenue Branch of the Security-First National Bank, didn't you?

A. I withdrew this same money, this \$6,000, and that was all I had. I paid \$16,000 for this Vermont property and sold it for \$7,000; I lost \$8,000 on that.

Q. What property?           A. The Vermont property.

Q. When did you buy that Vermont property?

A. I bought that from the estate, in 1938.

Q. You got that in the distribution of your mother's estate?

A. No sir. I bought it from the boys. All of the properties were together and our fourth was in that, and the boys got together and chose everything they wanted, and they took everything that was good, and there was this building that was a white elephant, and they got me to buy it and I lost it.

(Testimony of Melanie Douillard Woodd)

Q. Did you have that money in the bank at the time you sold the property?

A. No, at the time I sold that property I didn't have a nickel.

Q. On the 20th of June you had \$5100 in the Western [19] Avenue bank?

A. Now is that the Los Angeles Security Bank or the Hollywood?

Q. That is Los Angeles.

A. That is the rest of the \$6500, or whatever it was.

Q. Then you had that at the time you got \$7500 for the sale of the Vermont property?

A. That is the same money. I transferred that money from the bank. I put it in the Western Housing, or something. I thought I could get more interest on that, and in reading in the newspapers, they were changing their name and I took it out of there.

Q. In any event, you had \$6800 on April 10, in the Security-First National Bank at Fifty and Spring?

A. All right; maybe I did.

Q. Did you put that \$6800 in the Western Avenue Branch of the Security-First National Bank, or in the postal savings?

A. I put \$2,000 in the postal savings. That is all you can put in there. I put the other \$4,000 in the Western—I don't know, maybe a few hundred dollars I used.

Q. So, on June 20, 1939, you had \$5100 in the Western Avenue Branch of the Security-First National Bank?

A. Western and Santa Monica, yes sir.

Q. And at the same time you had \$2,000 in postal savings?

A. No.

(Testimony of Melanie Douillard Woodd)

Q. What had you done with the \$2,000? [20]

A. That was in that \$5100; I put all of the money back together again.

Q. How long did you keep your money in the postal savings?  
A. Maybe two months.

Q. How did you transfer this money from the Fifth and Spring Branch of the bank?

A. By check; I just drew it out.

Q. You went to the window and handed them a check and got the money?  
A. Yes sir.

Q. And carried it away in cash?

A. That's right.

Q. And that is the money you say you deposited in the Great Western Building and Loan Association?

A. That same money.

Q. How much did you deposit there?

A. About \$4,000.

Q. When did you make that deposit?

A. I don't know now.

Q. Was it the same time you withdrew this money from the Fifth and Spring Street bank?

A. It may have been a few days later.

Q. How much money did you put in that building and loan association?

A. For the third time, Mr. Austin, \$4,000.

Q. How long did you leave it there? [21]

A. Maybe a month or two months.

Q. At the same time you put that \$4,000 in the Building and Loan Association you put \$2,000 in the postal savings?  
A. Yes sir.



(Testimony of Melanie Douillard Woodd)

Q. Then when did you make a deposit in the Western Avenue Branch of the Security-First National Bank, of \$5100, which you withdrew on June 20, 1939?

A. That is the same money that I took out of the Western. I don't even know now whether it was \$4,000. You would have to look that up. Anyway out of that six thousand or sixty-five hundred dollars, that same money was juggled around from one place to another. I even carried it on my person for awhile.

Q. So, on April 10th, when you withdrew this money, you deposited part of it in the postal savings and part in the Great Western? A. Yes sir.

Q. And then withdrew it and deposited it in the bank?

A. Yes sir.

Q. Then on June 20th you withdrew \$5100 from the bank? A. Yes sir.

Q. What did you do with that money?

A. I bought the place on Virginia Avenue and built the little house in the back and put in extra plumbing and so forth, and also purchased a place in Glendale.

Q. About the same time that you withdrew this \$5100 [22] from the Western Avenue Branch you sold this Vermont property for \$7500?

A. I sold the property before I put the money in there.

Q. Then you had the \$5100 that was in the Western Avenue Branch on June 20th and the \$7500 you got from the Vermont property at the same time?

A. The \$7500 I got from the Vermont property, it came to less than that, six thousand and something after the commission was taken out and so forth and the escrow fees, and with that money I purchased,—first I

(Testimony of Melanie Douillard Woodd)

put it into the Western Federal, or whatever it was, and then \$2,000 in the postal savings, and I withdrew it from there. I thought I wanted a home in Hollywood so I could have some rent coming in—I cannot hold on to money, and I thought I would have some rents; so I purchased that property on Virginia and Hobart from the Pacific Mutual, through Mr. Thirtle, then I purchased the property from Mr. Kole, in Glendale, and paid down \$2000, and fixed that house up—put on a new roof and new plumbing, and a beautiful new porcelain sink that cost \$60.

By the Referee:

Q. What happened to it?

A. That is the property that was sold at sheriff's sale.

Q. How much money had you put in that?

A. About \$2500. [23]

Q. How much did you owe on it?

A. About \$1700.

Q. How much did it cost you?

A. Thirty-four or thirty-five hundred dollars.

Q. They took both of these properties on this Hovey judgment?

A. Yes sir.

The Referee: The records of these attorneys will be produced here as to payments you have made to them.

Q. I want to get this clear—You have never paid them any cash fees or retainer?

A. No; I paid for the depositions.

Q. And the costs? A. Yes sir, and the briefs.

Q. But they never asked you for any fees and you never paid them any fees until in this trial, when you say it appeared that Judge Clark was going to decided against you, then they wanted to know how they were going to come out?

A. Yes sir.

(Testimony of Melanie Douillard Woodd)

Q. And that lead to the execution of the notes?

A. Yes sir.

Q. How soon after that did they sue you, or cause you to be sued?           A. I don't know—

Q. They sent them to you right away?

A. Yes, because that paid off everyone. [24]

Q. Paid the Douillards?           A. Yes sir.

Q. So it was a first lien?

A. Yes. They have been fighting us back and forth and have lost the decision three times. Just last week, or two weeks ago, they lost in the appellate court, and Mr. Heath passed away a week ago and has not been paid.

By Mr. Austin:

Q. Now you have been living in that same apartment or house since 1939?           A. Yes sir.

Q. When did you make arrangements with Dr. Hovey that you were to collect the rents and have the use of that property for the collection of the rents on the property?

A. I don't know that I made any arrangement with him. I talked with Mr. Heath and they talked it over and said they couldn't put me out.

By the Referee:

Q. Why couldn't they?

A. Where could I go? Yes, they could have put me out, sure they could have.

Q. When did you talk to them about that?

A. After the sheriff's sale.

Q. When did you talk to them about staying there and collecting the rents for the use of the place? [25]

A. Ever since then.



(Testimony of Melanie Douillard Woodd)

Q. What about the Glendale property; what kind of a deal did you have on that?           A. Nothing on that.

By Mr. Austin:

Q. But you did collect the rent on that for quite a while after it was sold to the Hovey judgment?

A. When it was in the Douillard's name I sold it to my nephew; I didn't know you couldn't sell a piece of property when there was a judgment on it, but I did.

Q. How much did your nephew give you for it?

A. About \$200.

Q. Was it by check or cash?           A. Cash.

Q. Where did you put it?           A. I used it.

Q. How long ago was that?

A. In 1941, I think.

Q. When was the execution sale against you?

A. In 1943, I think.

Q. Then you sold it to him when there was a judgment on it?           A. Yes sir.

Q. What judgment was on it?

A. Hovey's judgment.

Q. He gave you \$200? [26]           A. About that.

Q. Then what happened next?

A. I guess Mr. Heath must have had that set aside; I don't know.

Q. Did they take it up with you? Did they talk to you about it?

A. I don't remember. Mr. Knapp, I think, can tell you.

By Mr. Austin:

Q. Your nephew then transferred it back to you, didn't he?           A. Yes.

(Testimony of Melanie Douillard Woodd)

Q. What was the occasion for that?

A. The mortgage came due and he went to war.

Q. What did you give him for it when he transferred it back to you?

A. I gave him a couple of hundred dollars back when he transferred it back to me.

Q. Where did you have that \$200 at that time, in a bank account?           A. No.

Q. Did you have a bank account at that time?

A. No.

Q. Were you working at that time?

A. No; friends loaned it to me—no, I sold a stove and the dining room table and a couch. That was the only [27] way I had.

Q. Now when was the last time you transferred any money to Dr. Hovey for rents on the house?

A. Last week; Saturday morning.

Q. Do you pay the taxes on the property or does he?

A. He does.

Q. Who did you deliver that money to?

A. Dr. Hovey.

Q. How long have you been paying the money to Dr. Hovey in person?           A. Since January of this year.

Q. How did you pay it prior to that time?

A. I sent it in to Mrs. Knapp.

Mr. Austin: If the Court please, we are unwilling to have this examination terminate until we have some examination of Dr. Hovey.

The Referee: Well, we can have a continuance.

Mr. Austin: Mr. Heath and Mr. Knapp were her attorneys in the Douillard case, and instead of giving

(Testimony of Melanie Douillard Woodd)

them a note, they sued her and attached her property for everything they said was due her prior to the rendition—

The Referee: Then it was not a note?

Mr. Austin: No, there was no note; they sued her for \$7000.

The Referee: For services in this action?

Mr. Austin: I don't know, they didn't say what it was [28] for.

The Referee: We can put this over. How about Wednesday afternoon?

Mr. Bowden: That is agreeable.

Mr. Austin: That's all right.

The Referee: I suggest counsel for claimant confer with the Trustee and determine what other records or documents you have to have in here, or want to have produced and I can have subpoenas issued for them. I suggest, Mrs. Woodd, that you make up, for your own convenience, a memorandum, tracing these bank accounts, money, investments, property and sales and so forth, because I can anticipate how difficult it is to remember those dates and amounts, and you can have the use of your memorandum, if we go over this again. Apparently what the Trustee wants to know is how much money came into your possession and what happened to it, and approximately when, and what properties you have had since your mother died; so you get them, and what you paid for them and how you disposed of them or lost them. You can prepare all of that between now and then, and have recourse to whatever records you want.

Mr. Austin: I would like to have the witness instructed to bring all of the papers and records and checks.

Witness: I don't have any.



(Testimony of Melanie Douillard Woodd)

Mr. Crandell: I think counsel knows that. We have gone into that thoroughly, and counsel has been in this case [29] all of the time, and all of the others, and he knows it better than she does.

The Referee: The order to you is to bring in any and all records, documents, bank statements, checks, deeds, mortgages, rental receipts, or anything of any kind or character that pertains to your business transactions. That will be on September 19, at two o'clock.

(Court adjourned.) [30]

Melanie Douillard Woodd

October 16, 1945

First Meeting of Creditors  
Cont'd from 10/3/45

The Referee: Melanie Douillard Woodd.

Mr. Bowden: Ready. Dr. Hovey?

DR. M. L. HOVEY,

having been first duly sworn, on oath testified as follows:

Direct Examination

By Mr. Bowden:

Q. Doctor, I believe at the last hearing you testified regarding two pieces of property that formerly belonged to the bankrupt, on which you secured an execution?

A. Yes sir.

Q. Now was the street address of that Hobart property 1152 and 1156 North Hobart?

A. I don't remember the street number, but I believe that is correct.

(Testimony of Dr. M. L. Hovey)

Q. According to my records it is also 5252 Virginia Avenue? A. That is around the corner.

Q. In other words, that is a corner property?

A. Yes sir.

Q. How many buildings are there on it?

A. There are two, I believe. The number 1152 is on [31] one house; I don't remember if that is the the number; there are two little houses there.

Q. Well, 1152, was that for one house?

A. Yes sir.

Q. And 1156 another? A. I think so.

Q. And 5252 Virginia Avenue is another house?

A. No, that is the same house as 1156.

Q. You mean it has two street numbers?

A. Yes.

Q. Are there two entrances to the house?

A. Yes.

Q. Is it a double or a duplex?

A. No, it is just a large house on the corner with two entrances.

Q. Have you brought any records regarding these transactions with you?

A. No, other than notes that I got by 'phone, from the attorney.

Q. What is the present encumbrance against the Hobart property?

A. I don't know what that is. That is the Virginia Avenue single house. I believe the loan against that is about \$2800.

Q. You mean that is the balance or the original amount?

A. There is something paid since then, I don't know [32] just how much.

(Testimony of Dr. M. L. Hovey)

Q. What is your best estimate?

A. There is very little paid on that; I think that is within \$30 of it.

Q. Is there any other encumbrance against the place?

A. Not that I know of.

Q. What is the amount of your judgment?

A. It was sold at sheriff's sale for \$1775.

Q. What was the date of the sale?

A. April, 1943.

Q. Has anything been paid on that?

A. Not that I know of.

Q. Well, you would know if anyone did, wouldn't you?

A. No, that is all in the hands of the attorney, and since the case is not settled I have no direct knowledge of it.

Q. Which attorney is handling it?

A. Since Mr. Heath's death, I think Mr. Knapp.

Q. And he has the full records of it?

A. Yes sir.

Q. I think you testified that Mr. Knapp's wife, who is his secretary, has taken care of it?

A. She did most of the work.

Q. Who is collecting the rent at the present time?

A. The rent comes to me.

Q. What is the rent on the Hobart property? [33]

A. I said the other day it was more than it is; it is \$30 from the one tenant, Theris.

Q. Where does the tenant live?

A. They live on—

Q. Virginia Road?                      A. The Hobart side.

Q. Who lives in the other side, on Virginia Road?

A. Mrs. Woodd.



(Testimony of Dr. M. L. Hovey)

Q. Now I think you said there were two buildings on the Hobart side; does Theris occupy both of them?

A. No.

Q. Who occupies the other?

A. I don't remember who is in there. I believe that pays \$20 a month.

Q. So outside of Mrs. Woodd's rent you get \$50 a month, is that correct?

A. That is \$30 on that house; I don't know anything about the other one. It is still in the hands of the lawyer's office.

Q. I thought you just testified it was \$20 a month rent?

A. That is what I understand, but I don't know. I don't know the tenant's name.

Q. What does Mrs. Woodd pay you?

A. She doesn't pay me. She pays me the equivalent of \$25; her rent is supposed to be \$25, for taking care of the place. [34]

Q. Is it an apartment or a house she lives in?

A. A house.

Q. How many rooms?                      A. Six or seven.

Q. And she only pays \$25 a month for six or seven rooms?

A. She doesn't occupy the whole house; it is divided between two tenants—Mrs. Woodd and Mrs. Theris—Mrs. Theris has two or three rooms and Mrs. Woodd has the rest of the house.

Q. Who is Mrs. Theris?                      A. She is the tenant.

Q. Yes, but is she a relative of yours or Mrs. Woodd's?                      A. No, neither one.

(Testimony of Dr. M. L. Hovey)

Q. How long has she been living there?

A. I don't know. I saw her a year or a year and a half ago; I don't know how long she has been there.

Q. And what is your estimate of the value of this property and all of the buildings?

A. Well, I don't know the actual value.

Q. I didn't ask you for the actual value; just give me your opinion of what you think it is worth on the present day market.

A. Well—in the condition of the houses, I should judge about \$5,000 or \$5,200.

Q. When is the last time you received an estimate from [35] anyone as to the value of the place?

A. I never did.

Q. Did you ever talk over the value with Mr. Knapp or Mr. Heath?      A. No.

Q. Did you ever have a conversation with them regarding the sale or leasing of it?      A. No.

Q. Did you ever have a conversation with Mrs. Woodd regarding the sale or leasing of it?      A. No.

Q. What is your understanding of what Mrs. Woodd is to get out of this when it is sold, if anything?

A. I don't believe she has anything to get out of it.

Q. Well, do you know?

A. I don't believe she has any equity in it at all.

Q. Doctor, I think the other day you testified you had \$1,000 coming from Mr. Heath or Mr. Knapp, or both of them, and you were going to get the money out of this property, is that correct?

A. I expect to get it when this suit is settled.

Q. You testified the other day you were going to get it out of this property.      A. That is right; I want it.

(Testimony of Dr. M. L. Hovey)

Q. What did you mean by "when it is settled"?

A. Well, there has been numerous suits between the [36] family, and the assignment was to me for legal fees, and when the final decision is made, then I will get it.

Q. You are not a lawyer are you? A. No.

Q. What did you mean by "legal fees"?

A. Mr. Heath's and Mr. Knapp's fees.

Q. Not yours? A. Of course not.

Q. Do you know what their legal fee is?

A. No.

Q. Are you in the habit of going into things like this and having a bill for \$1000? A. Yes.

Q. And you have no records?

A. No; Mr. Heath has the records.

Q. How long have you been acting as assignee for Mr. Heath?

A. About two or three years. I have been assignee in this case.

Q. Not in this case, but I mean in any case; how long have you been acting for him?

A. Fifteen or twenty years.

Q. And you have had other cases like this?

A. Not like this, no.

Q. Now Mr. Heath is deceased; who do you expect to make your accounting to when this property is sold or dis- [37] posed of?

A. To Mr. Knapp and Mr. Heath's estate.

Q. Is there an executor or executrix of Mr. Heath's estate? A. I don't know.

Q. Do you know whether there is any probate proceeding pending? A. No.



(Testimony of Dr. M. L. Hovey)

Q. Have you had any written agreement with Mr. Heath or Mr. Knapp regarding the handling of this property?      A. No.

Q. No writing between you at all?      A. No.

Q. What understanding do you have with Mr. Knapp at the present time?

A. I have nothing except a verbal opinion, that when the case is settled, that whatever is just and fair I will receive.

Q. Doctor, you know you have all of Mrs. Woodd's property in your name at the present time?

A. Yes sir.

Q. Didn't you consider that quite a responsibility?

A. Yes sir.

Q. And you have no written understanding with anyone regarding the handling of it?

A. That's right. [38]

Q. Did you have a written assignment of the claim before you started the suit?

A. I don't know; you will have to ask the attorney.

Q. I am asking you, if you don't know, just answer "no."      A. No, I don't know.

Q. What about the Glendale property, what is the rent on that?      A. \$35 a month.

Q. What is the encumbrance against that property?

A. About \$750.

Q. And it is a five room house?

A. I was told that; I have never been in it.

Q. What do you think the value of that property is on the present market?      A. About \$3250.

(Testimony of Dr. M. L. Hovey)

Q. Do you know where you can buy a place like that for \$3250?

A. That is all I have been offered for that place. That is all I know.

Q. When were you offered that?

A. About three months ago.

Q. By whom?

A. The bank that carries the loan on it.

Q. How did you happen to negotiate that business with the bank? Just tell us all about it and how it came about.

A. The loan had to be renewed and they made an appraisal [39] of the property.

Q. For the purpose of making a new loan?

A. That's right.

Q. Then what happened?

A. Well, they made that offer to take the property.

Q. Well, Doctor, that is not the way things happen. Just tell us the circumstances—how did the bank happen to make you an offer to buy the property?

A. They said the property had seriously depreciated in value, because of the poor condition of the building and the foundation.

Q. The property was not under foreclosure, was it?

A. No.

Q. Well, the bank was not interested in anything except collecting the monthly payments, was it?

A. I don't know.

Q. Who did you talk to about that?

A. Mr. Dick.

Q. When was that?

A. At the time of the making of the loan.

(Testimony of Dr. M. L. Hovey)

Q. Well, when, approximately?

A. Two or three months ago.

Q. What was the amount due on the loan at that time?

A. \$725, I believe.

Q. How was it being paid; so much a month?

A. Yes sir. [40]

Q. How much? A. \$20 a month.

Q. And the house was rented for how much at that time? A. \$35 a month.

Q. What were the taxes on the property?

A. I don't know for sure about the taxes on that property. I think \$38 or \$39, somewhere around there.

Q. A year, or what?

A. I don't know if that is a half a year or not; that is the last taxes.

Q. The trust deed was not in default, was it, at that time? A. No.

Q. But it was all due and payable?

A. That's right.

Q. Then the bank made an appraisal for the purpose of refinancing it? A. Yes sir.

Q. Which they did? A. That's right.

Q. How did it happen they offered to buy the property? A. I have no idea.

Q. They didn't just say, "We will buy the property and give you \$3200 for it", there must have been some conversation.

A. They just said, "Why don't you sell it?"

Q. What did you say? ]41[

A. I said, "It seems a good idea".



(Testimony of Dr. M. L. Hovey)

Q. What else did you say?

A. He just made me that offer and I told him I would talk it over with Mr. Heath.

Q. Did you talk to Mr. Heath?

A. I asked him if it could be sold and he said it could not be until the legal affairs were straightened out.

Q. What legal affairs did he refer to?

A. I don't know.

Q. You have no idea?           A. No.

Q. Didn't he refer to the accounting with Mrs. Woodd?

A. He was referring to the suit by her relatives against the property. That is my opinion.

Q. And he said nothing could be disposed of?

A. That is the way I understand it.

Q. Did he say nothing could be done because she didn't want to have it in her name, or didn't want to have the money in here name?           A. No.

Q. Nothing of that kind at all?           A. No.

Q. Did you ever have a conversation with Mr. Heath or Mr. Knapp or Mrs. Woodd regarding the keeping of the property out of Mrs. Woodd's name until the litigation was disposed of? ]42[

A. No, I never have.

Q. What was your understanding about this friendly suit?

A. I was told it was a friendly suit, and what a friendly suit is, I don't know.

Q. You are an educated, intelligent man, what would you think?

A. I thought it was to settle the legal fees due the attorneys.

(Testimony of Dr. M. L. Hovey)

Q. Attorney fees due Mr. Knapp and Mr. Heath?

A. Yes sir.

Q. Do you know how much they were?

A. I believe they thought they were entitled to about \$7000.

Q. Now you had a conversation with Mr. Heath before this assignment was made, didn't you?

A. I don't recall. He assigns things to me like that. He probably called me up and said he was assigning it.

Q. Tell us what he said.

A. I don't recall exactly.

Q. Well, as near as you can.

A. He said he was assigning the suit in settlement of legal fees, and would sue in my name.

Q. Whose suit was it, did he tell you that?

Mr. Crandell: I will make an objection to this line of questioning. The records are the best evidence, and they are full and complete. [43]

The Referee: The records might not have any record of this conversation. Objection overruled. All we want is the truth.

Witness: Here is a copy of the decision.

The Referee: Show it to counsel.

Mr. Bowden: I am not interested in seeing the decision.

By The Referee:

Q. Now what did this man say when he called you and told you he was going to assign this claim to you? That is what we want to know.

A. He said he would assign the claim to me and he was going to sue for legal fees, and for me to come down and sign the papers.

(Testimony of Dr. M. L. Hovey)

Q. Are you a regular physician?

A. I am a chiropractor.

Q. Do you follow your profession regularly?

A. Yes sir.

Q. And did you take time out from your profession to be the assignee for this man Heath for twenty years?

A. Yes sir.

Q. What were you to get out of this particular transaction, this Woodd transaction?

A. We had no specific agreement.

Q. What would you normally expect to get out of it?

A. I would get paid according to the time involved in it. [44]

Q. Would you change your regular rate as a chiropractor?

A. My time in court. I would charge more than I would on my profession or in the office.

Q. I don't know much about this, but I understand a judgment was obtained against this bankrupt for \$4,000 and this property was sold immediately under execution; did you bid it in?

A. The attorneys bid for me at the sheriff's sale.

Q. And you say you bought this property for \$1700?

A. \$1775 I believe was paid in on the Virginia property.

Q. How much on the Glendale? A. \$1250.

The Referee: All right. Go ahead Mr. Bowden.

By Mr. Bowden:

Q. Now you knew the fees that were involved in this suit were fees that Mr. Knapp and Mr. Heath claimed to be owing by Mrs. Woodd?

A. That's right.



(Testimony of Dr. M. L. Hovey)

Q. And you knew Mr. Knapp and Mr. Heath represented Mrs. Woodd as her attorneys?

A. They had represented her.

Q. Well, they were representing her at the time the assignment was made, were they not?

A. I believe another attorney represented Mr. Woodd.

Q. That is in this particular action we are talking about, but you knew Mr. Heath and Mr. Knapp represented Mrs. [45] Woodd in an appeal that was pending in another case?

A. Well, I don't know.

Q. Now who represented you in that suit you filed against Mrs. Woodd?

A. Mr. Heath.

Q. Are you sure?

A. No, no sir.

Q. And who represented Mrs. Woodd?

A. I don't know.

Q. Was she represented?

A. I don't know.

Q. You were in court weren't you?

A. I believe Mr. Martindale, or some such name.

Q. You were in court when the case was heard?

A. It is very confusing and I don't recall.

Q. Doctor, don't you remember when you go to court?

A. Yes, once in awhile.

Q. Are you always confused when you go to court?

A. Nearly always.

Q. Now on this friendly suit, do you remember ever going to court on it and being present personally in court?

A. Yes sir.

Q. And that was the time when they had a trial?

A. Yes; I was in court a few minutes and what actually took place, they asked me a few questions and I left and went back to my office, and what was taking place exactly, [46] I don't recall.

(Testimony of Dr. M. L. Hovey)

Q. How much had you sued for in the beginning?

A. The attorneys' fee; I believe they were asking about \$7000.

Q. And what did you obtain judgment for, what amount?

A. I don't know what that was; they bought the property in.

Q. No, before they bought the property in, how much were you awarded in that case against Mrs. Woodd?

Mr. Crandell: You have the records.

By the Referee:

Q. Do you have the records?                      A. I don't know.

Mr. Crandall: I can tell him; it was \$4000.

The Referee: Let this witness tell it. Here is a man who is an assignee and apparently he doesn't know anything about it. He should quit being an assignee if he doesn't know anything about —

Mr. Crandell: Well the court records are the best evidence.

The Referee: That is true, but we don't go on technicalities in this court; we go after the direct truth in the simplest way. You have a lot of technicalities that might bind it all up, but I don't have that over here.

Mr. Crandell: It seems to me the simplest and most correct way would be to follow the records of the courts. [47]

The Referee: That might be the technical way but this man should know, he is an intelligent man. I assume you have to have some education to be a chiropractor, don't you?

Witness: I think so, but I have very little legal education.

(Testimony of Dr. M. L. Hovey)

By Mr. Bowden:

Q. Is it your recollection the judgment was \$4000?

A. I don't know. He says it was, and probably he would be more apt to know.

Q. Do you recall that when you were in court some letters were introduced by the attorney representing Mrs. Woodd wherein she agreed to reduce the claim from \$7000 to \$4000?

A. I don't recall that.

Q. Did you testify in the action?

A. I believe I was on the stand, but I don't remember just what was said in the record.

Q. All right. Tell us how much you claim for your services in connection with this assigned claim of Mr. Heath's and Mr. Knapp's?

A. A set fee for my services has never been made.

Q. Well, you have some idea of what you have coming to you up to this point, don't you?

A. I believe I should have at least \$1200 out of it.

Q. \$1200 out of \$4000; how do you arrive at that [48] figure?

A. From the time involved and —

Q. All right. You were only in court once for a few minutes, weren't you?

A. I don't recall but being in court once.

Q. And Mrs. Woodd is still collecting all of the rents from the Hobart property, is she not?

A. I am collecting the rents from there.

Q. Doesn't she collect them and bring them over to you?           A. That's right.

Q. And she gets her apartment for taking care of that?           A. That's right.



(Testimony of Dr. M. L. Hovey)

Q. And the rent from the Glendale property is sent to Mr. Knapp's office, is it not?

A. No, it is sent to me.

Q. Now tell us how you fix your figure of \$1200; tell us what work you have done.

A. I was assigned the responsibility of taking care of the property and seeing the rents were collected and the place kept rented. Most of that work was done by Mr. Heath in his office before his death and when he became ill he suggested I take the responsibility myself.

Q. How long ago was that?

A. About two months ago.

By the Referee:

Q. What was Mr. Heath's name? [49]

A. Fred W.

By Mr. Bowden:

Q. This is Mr. Knapp's ex-law partner. And that is all of the responsibility you have taken, in the last two months?

A. In the last two months. That being assigned in my name I felt was a responsibility, and when I had to go to the bank to renew the loan in my name; I have been up there a good many times on very short notice, and had to cancel my appointments in the office.

Q. Have you paid the taxes?

A. I haven't yet; Mr. Heath, I think, has paid that.

Q. Are the same tenants living in the Hobart Street property now that were there before the property was bid in in your name?

A. I don't know.

Q. You don't know of any change?

A. No.

(Testimony of Dr. M. L. Hovey)

Q. How long has it been since you have been around there?

A. I was there a few days ago and I was there nearly a year ago.

Q. What did you go there for a few days ago?

A. Because the Referee suggested I should go and see it.

Q. He suggested you get all of your data together, didn't he?

A. That is what I thought he meant. [50]

Q. Who did you see when you went there a few days ago?

A. No one but Mrs. Theris.

Q. Did you see Mrs. Woodd?

A. No.

Q. How long has it been since you have seen Mrs. Woodd?

A. I see her every few weeks, and occasionally a day or two apart.

Q. How far is the Hobart property from your office?

A. About two miles.

Q. Does she personally come over with the rent or does she mail it to you?

A. She personally comes over, or takes it to the bank.

Q. Which bank?

A. The Security-First National.

Q. What branch?

A. Sixth and Spring.

Q. What account does she deposit it in, do you know?

A. She makes a payment on the loan in my name there.

Q. She doesn't deposit the money?

A. No; I take the money and write the checks.

Q. What do you know about this Yarborough note?

A. I don't know anything about that note.

(Testimony of Dr. M. L. Hovey)

Q. Aren't you the assignee of that note?

A. I believe so.

Q. Haven't you collected seven or eight hundred dollars on it? [51]

A. That money has all been paid directly to the law office.

Q. Mr. Knapp's office? A. Yes sir.

Q. What was that claim from?

A. I don't know.

Q. You don't know anything about it? A. No.

Q. When was it assigned to you?

A. I don't know that.

Q. How much did you charge for your services in connection with that?

A. I don't know; that is not settled either.

Q. By the way, have you ever charged Mr. Heath or Mr. Knapp anything for your services when you have acted for them? Answer that "yes" or "no", it is a simple question.

(Witness laughs)

A. Well, the charges have never been fixed because the case has never been settled.

By the Referee:

Q. He wants to know if you have ever collected anything. A. Yes sir.

By Mr. Bowden:

Q. On what case?

A. I was given an advance of \$100 on —

Q. Now we are begging the question. I asked you if [52] you had ever charged anything for your services in connection with any assignment. I am not asking



(Testimony of Dr. M. L. Hovey)

about any advances or what anyone has ever said to you. You know what a charge is, don't you?

A. Yes sir.

Q. That is what I am asking.

A. No, I never have.

Q. In any case?

A. No. That means I have never mailed a bill or set a price.

By the Referee:

Q. Well, you don't do that with your chiropractic patients, do you?

A. Unfortunately, sometimes I do.

Q. But you send them a bill, don't you?

A. Yes sir.

Mr. Bowden: Mr. Austin would like to ask a few questions.

The Referee: Whom does Mr. Austin represent?

Mr. Austin: I represent some of the creditors.

The Referee: All right.

By Mr. Austin:

Q. Isn't it a fact that you have had in your possession the proceeds from the collection of the Yarborough note?

Mr. Crandell: I will object to that; there is nothing here to show a Yarborough note.

The Referee: Do you represent the bankrupt? [53]

Mr. Crandell: Yes sir.

The Referee: Well, if you represent the bankrupt you have no right to object to anything and all objections made by you are now all overruled. I will tell you why; because when the bankrupt comes here he and his attorney

(Testimony of Dr. M. L. Hovey)

submit themselves and all of their affairs to the Referee and the Trustee. Now it is odd that you, representing the bankrupt, want to put objections in here, and I don't want any more objections from you.

Mr. Crandell: I understand that and I am sorry, but it's rather hard to see the witness misused—

The Referee: I will take care of that. And as the attorney for the bankrupt you are here to help us and not hinder us.

Mr. Crandell: That is right. That is what I want to do.

By Mr. Austin:

Q. You have collected some money from Mr. Yarborough on a note that belongs to Mrs. Woodd, haven't you?

A. That money has always been paid to the attorney's office, and I don't know how much has been collected or what it amounts to.

Q. Didn't you pay into the court recently \$900 of that money as a bond on appeal in a case involving that note?

A. I don't recall that. I put up \$900 as a bond on an appeal. [54]

Q. Where did that \$900 come from?

A. From a loan on the property.

Q. What property?

A. I believe that is the Virginia Avenue property.

Q. Was that in addition to the loan that was on there at the time you took the property over?

A. That's right.

Q. So that property now has a second loan on it?

A. No, that is a new mortgage.

(Testimony of Dr. M. L. Hovey)

Q. You simply increased that loan?

A. Yes sir.

Q. By \$900? A. \$1000.

Q. And used \$900 of that as a bond to stay execution in the appeal in the case of Puissegur vs. Yarborough?

A. I believe that is right.

Q. What interest did you have in the Yarborough note? A. The note was assigned to me.

Q. By whom and when?

A. I don't know; Mr. Heath and his office.

Q. You didn't have anything to do with the Yarborough note and its collection?

A. I recall talking to Mrs. Yarborough a year or two ago about the payment of the note but I told them then all of that would have to be done through Mr. Heath's office. [55]

Q. Now the note that you are talking about is payable to Melanie Douillard Woodd, isn't it?

A. I don't know.

Q. And the suit was by Mr. Puissegur against Mrs. Yarborough on a note made payable to Mrs. Woodd, isn't that the situation? A. I don't know.

Q. How did you happen to make the bond on that appeal, Doctor?

A. The property bond, I believe was held insufficient by the Judge.

Q. You had offered yourself as surety on that bond, had you not? A. Yes.

Q. How did you happen to become bondsman in that case? A. I don't know.

Q. Who suggested that you should sign that bond?

A. Mrs. Knapp.



(Testimony of Dr. M. L. Hovey)

Q. Did you have any talk with Mr. Knapp or Mr. Heath about it?

A. Mr. Heath said he thought it was unnecessary, that the property bond should have been sufficient.

Q. What did that property bond consist of?

A. I don't know; Mrs. Knapp's property.

Q. Didn't it consist of your property too?

A. No. [56]

Q. Didn't you sign that bond too?

A. I don't recall signing it.

Q. Do you recall being called in to court and examined as to your qualification? You recall that, don't you?

A. Yes sir.

Q. How did you happen to make a bond in the case in which Mr. Puissegur was suing Mrs. Yarborough?

A. I did that at the suggestion of my attorney.

Q. Was that because the note Mrs. Woodd had had was then your property?

A. I understood the note was then my property.

Q. But you never collected any money on it?

A. Whatever money has been paid is still in the hands of the attorney.

Q. You don't know how much that is?

A. No, I don't.

By the Referee:

Q. What attorney?

A. Mr. Knapp and Mr. Heath.

Q. Mr. Heath is dead; he cannot hold any money.

A. At that time Mr. Heath was alive.

Q. Then it is now in the hands of either Mr. Knapp or Mr. Heath? A. That's right.

Mr. Austin: That is all of the questions I have.

(Testimony of Dr. M. L. Hovey)

The Referee: All right. Stand aside. Next witness. [57]

Mr. Bowden: Mrs. Woodd, will you take the stand? And I would like to have the Doctor remain a few minutes.

The Referee: Yes.

MELANIE DOUILLARD WOODD

having been first duly sworn, on oath testified as follows:

Direct Examination.

By Mr. Bowden:

Q. Mrs. Woodd, where do you live?

A. At 5255 Virginia Avenue.

Q. How long have you lived there?

A. I have lived there since 1939.

Q. And you formerly owned that property?

A. Yes sir.

Q. How long have you known Dr. Hovey?

A. Six or seven years.

Q. Do you have any present transactions with him?

A. I did.

Q. Do you have any now?

A. No, I haven't had for about a year, I think.

Q. What was the last transaction?

A. Professional service?

Q. No, when did you have the last transaction of any kind with him?

A. Well, I guess last month; I brought the rent down to him. [58]

Q. He now owns all of the property you formerly owned, is that correct?

A. Yes, I guess that is right.

(Testimony of Melanie Douillard Woodd)

Q. How did he get it?

A. He bought it through the sheriff's sale.

Q. That was on a judgment in which he sued you?

A. Yes sir.

Q. At the time he sued you your attorneys were who?

A. When he sued me?

Q. Yes.

A. Well, Mr. Heath and Mr. Knapp were my attorneys. Your Honor, this started in a different way. Mr. Heath was my attorney when the Douillards sued me in 1939. This involves quite a thing. Could I tell you a little of the beginning?

The Referee: I think you can just answer the Trustee's question: Who were your attorneys.

A. Mr. Heath and Mr. Knapp.

Q. Now the suit commenced by Mr. Heath's; or rather Dr. Hovey's involved attorney fees, which were supposed to have been earned by Mr. Knapp and Mr. Heath?

A. That's right.

Q. How did he happen to sue you?

A. Well, Dr. Hovey was just a name to me. I owed Mr. Heath \$2500 and at first it was \$7000 and I thought that was too much and we talked it over and they had a friendly [59] suit for fees and I had Mr. Martindale for my attorney, Mr. Heath could not represent me anymore, and they sued me for their fees in Judge Yankwich's court, and I thought \$7000 was too much and I told Mr. Martindale so, and they said \$3500 for Mr. Heath and \$1500 for Mr. Knapp would be enough, and Mr. Martindale thought \$3500 was too much and they scratched that out in the court before the Judge and we agreed that \$2500 was enough. I don't recall whether Dr. Hovey was



(Testimony of Melanie Douillard Woodd)

in the courtroom or not, but I think he was, but the dealings were always with Mr. Heath and through that office.

By the Referee:

Q. Was that in Dr. Hovey's suit?

A. Yes sir, the attorneys sued for Dr. Hovey.

Q. As I understand it, you had a friendly suit for the amount of the fees? A. Yes sir.

Q. And at that time it was agreed or determined or found that you owed Mr. Heath and Mr. Knapp how much money? A. \$7000.

Q. No, that is what they claimed and you said that was too much.

A. Oh, I see; it came to \$4000.

Q. Then as soon as that judgment was entered it was assigned by Mr. Knapp and Mr. Heath to this man, Dr. Hovey? [60]

A. The Hovey judgment—this Douillard suit was in 1939, and the judgment, I think, was put on me for \$7500 in 1939, and Dr. Hovey's suit came in for the attorneys fees I guess before the Douillards.

Q. No, it was after, because it has a higher number, The Douillard suit is number 435718 and the Knapp and Heath judgment was 450821.

A. What does that mean?

Q. It means the Douillards sued you under action number 435718 and Heath and Knapp sued you under number 450821. It must have been at least a year.

A. No; is there such a thing as an execution comes first?

Q. No; they have to get a judgment.

A. All right. The Hovey judgment was twenty or thirty days before the Douillard judgment.

(Testimony of Melanie Douillard Woodd)

Q. I am just reading from the record. You hired an attorney and they have a record here, Superior Court action number 435718, action brought by Austin, Higgins and Clements, attorneys for the Douillards, and later on there is case number 450821, Daniel A. Knapp and Fred W. Heath, attorneys, Judgment in favor of M. L. Hovey. All right. Go ahead. Dr. Hovey bid it in, he told us.

A. Yes, in 1943 then Mr. Heath bid it in for Dr. Hovey. Dr. Hovey was never present; it was always Mr. Heath. [61]

By Mr. Bowden:

Q. Mrs. Woodd, before Dr. Hovey sued you, did you ever receive a bill from Mr. Knapp or Mr. Heath, or both of them, regarding these fees? A. Yes sir.

Q. When? A. Before we had the friendly suit.

Q. What kind of a bill was it?

A. Well, we had an agreement. I wrote—

Q. I know you wrote a letter to Mr. Knapp, saying "I will agree to pay \$2500". A. Yes sir.

Q. And you wrote another letter saying, "I will agree to pay \$1500 and \$2500, making \$4000".

A. Yes sir.

Q. We understand that. Now before this time did you ever receive a bill from them for legal services?

A. No, I didn't, because Mr. Heath didn't know how much this bill would come to.

By the Referee:

Q. Well, they sued you for \$7500? Now these men were charging \$7,000 to defend a \$7500 lawsuit?

A. Yes, they have been fighting ever since. Every little move they could do to me to harm me, they did it, my brothers. The whole thing is spite. I took out of the

(Testimony of Melanie Douillard Woodd)

\$10,000 bequest \$4,000 to pay—and I bought a big build- [62] ing of \$7500, and I bought the mortgages—this big building was mortgaged for \$6500. I had \$14,000 worth of mortgages—\$6500 on Vermont, \$3000 on Virginia and \$2000 on Glendale, and \$2400 on Hobart. I had all of those mortgages and then my brother has a son with six little babies and they were on the county and sleeping on the ground. I took a \$2000 home and furnished it and bought the car from the estate and gave it to them. He didn't tell me he hadn't paid for his lot and they were going to take away the whole thing and I went to Mr. Heath and he said, "You had better take a mortgage on that or everything will be gone" and I had to take \$500 out to pay this.

The Referee: Do you want to hear all of this?

Mr. Bowden: No.

Witness: I want to show you that in 1939 I was broke and I couldn't pay Mr. Heath and Mr. Knapp, and out of the kindness of their hearts they took the case.

By Mr. Bowden:

Q. Mrs. Woodd, where do you have your bank account? A. I don't have any.

Q. Where did you have it?

A. I had one in the Security Bank and also the Citizens Bank.

Q. What branch of the Security?

A. The old head office, at Fifth and Spring, and then [63] later I changed over for the sake of my mortgage, into the head office at Sixth and Spring. That was in 1939, and I don't think I have had any money in the bank since then.



(Testimony of Melanie Douillard Woodd)

Q. When did you last talk to Mr. Heath and Mr. Knapp about the attorneys' fees and before you were sued by Dr. Hovey?

A. Oh I can't tell you. Everything is of record.

Q. Let's get an approximation; what year?

A. 1939 or 1940.

Q. It might be the early part of 1939?

A. Well it could be—after the case—when we saw we were losing, Mr. Knapp, especially, said he want to get his fees. I had nothing and it was slipping and he wanted his fees.

Q. You had nothing in 1939?

A. Yes, I had the properties yet but no money.

Q. What did you do with the \$6790 you withdrew from your bank account; pardon me, \$7005.50 which you withdrew from your bank account in April?

A. What?

Q. Here is a certified copy of your bank statement and I direct your attention to the balance there.

A. I sold my property, the big building.

Q. Mrs. Woodd, I want to know what you did with that money.

A. I bought the building for \$16,500 and sold it for [64] \$7500, and lost on the building. This \$7000 must be this money I sold the building for, minus the escrow fees and realtor fees. I don't deny I had that money.

Q. Mrs. Woodd, tell me what you did with that money when you drew it out of the bank account.

A. I cannot be sure whether it was four or five thousand, and I think four, I put in the Western Federal Housing, or something like that, and then I took \$2000 and

(Testimony of Melanie Douillard Woodd)

put it in the postal savings—I took as much as I could, and I think it was \$2000.

Q. What became of the \$5000 you put in the Building and Loan Association?

A. I took that out.

Q. What are you reading from?

A. I have some little notes—the Referee said I could have notes to refresh my memory.

Q. When did you make those notes?

A. Just the other day.

Q. You are unable to testify without them?

A. Yes. I am trying to see what I did with that money. I had the \$7500, and I built a cottage—this is in 1939—I built a little room or shack in the back yard. I think that was about two hundred and some odd dollars, and then the City Commission or someone, made me tear that down and build a house, and I spent \$2000 to build a little house; that is \$1156, and this house and the duplex [65] are all on one lot, and I built the rear house to face one street and cut the other house in two. I spent about \$1000 dividing the big house, and I live there. Now there was \$375 realtor fees and I don't have the escrow fees. There was a lighting assessment that Mother had not paid, and I had to pay that, about \$130; and I fixed the roof and had it all repainted—the tenants moved out on me, they wanted to buy it but I wouldn't sell it for what they offered and they moved out and it stayed vacant for a long time, and then I paid the taxes on all of these mortgaged places and revived them, and then I spent \$1500 for the two apartments and a little cottage, and I furnished them all. Then I bought the Glendale property and I paid approximately \$2000—the place was

(Testimony of Melanie Douillard Woodd)

only \$3300, it is an old place, and I paid taxes on that—eighteen dollars and some odd cents; and I bought a Plymouth car for myself at \$800, and I gave it to my nephew, and when he went overseas—this brother's son, I was afraid he might hurt someone with it so I gave it to him outright.

Q. When did you give him that Plymouth?

A. In 1939; a month after I bought it.

Q. Where is the car now?

A. He tells me he sold it before he went overseas.

Q. He sold it? A. Sure, it was his.

Q. You just made him a gift? [66] A. Yes.

Q. And you owed all of these attorneys' fees at the time? A. Yes sir, I did.

Q. You have now been telling us what you did with the money received from the sale of this one piece of property? A. Yes sir.

Q. And you had that money in the Building and Loan Association and the postal saving in a portion of 1939 and a portion of 1940? A. Yes sir.

Q. When did Dr. Hovey sue you?

A. I don't know.

Mr. Austin: April 11, 1940 is the date of the Hovey suit, I think.

Q. And you closed this account on April 8 and 10, did you? A. Yes, I guess so.

Q. You drew out the \$7000? (No answer)

Q. Why didn't you pay Dr. Knapp and Mr. Heath when you had all of that money in the bank?

A. I wanted to secure myself first and then I would pay them either with a piece of property or something. I didn't mean to cheat those gentlemen.



(Testimony of Melanie Douillard Woodd)

Q. Did you have a conversation with Mr. Knapp and Mr. [67] Heath, or either of them, before this claim was assigned to Dr. Hovey, about your fees?

A. Yes sir, I did.

Mr. Bowden: If the Court please, I don't desire to inquire into any confidential relationship, although there is no objection—

The Referee: All right; just inquire into the fees.

Q. All right. Tell us what conversation there was and when it was, and who was present.

A. It was in Mr. Heath's office.

Q. About what date?

A. I cannot tell you.

Q. Well, remember the suit was filed April 11, 1940, does that refresh your recollection?

A. It might have been a few days after or before.

Q. Well, which? A. I don't know.

Q. Did you ever have a conversation with Mr. Heath or Mr. Knapp, or both of them, regarding the amount of your fee, before it was assigned to Dr. Hovey?

A. Yes sir.

Q. When?

A. Let's see; the case was in 1939, January or February—I think in February, it was right after or while the case was going on—I can't remember the dates. [68]

By the Referee:

Q. When you say "the case" it doesn't mean anything to me; did you mean the Douillard case?

A. Yes sir.

The Referee: All right.

(Testimony of Melanie Douillard Woodd)

Q. What was the conversation regarding the attorneys fees?

A. Mr. Knapp spoke up and he said he wanted his fees.

Q. How much did he say he wanted?

A. How much did he say he wanted?

Q. Yes. A. \$7000 for the two of them.

Q. Mr. Knapp said that? A. Sure.

Q. Was Mr. Heath there? A. Yes.

Q. What did he say?

A. I thought it was too much.

Q. Tell us the rest of the conversation; what did they say?

A. He said we would have to go to court and have it decided by a judge.

Q. And they were representing you at that time, weren't they? A. No.

Q. Wasn't there an appeal pending from the Douillard [69] judgment?

A. I don't think there was.

Q. Don't you remember a conversation with Mr. Knapp as to how much they were going to charge for the appeal? A. No sir.

Q. Or with Mr. Heath?

A. No sir. I asked them how much it would be and they said they couldn't tell.

Q. On the appeal? You had a special understanding with them on the appeal didn't you, that they would appeal it to the higher court and make you a flat charge, because they said they thought they could reverse it?

A. If it is the \$2500 and the \$1500, no sir. No sir, there was no more talk of fees.

(Testimony of Melanie Douillard Woodd)

By the Referee:

Q. Did the Douillard people get a judgment against you for \$7500? A. Yes sir.

Q. And was the Douillard judgment rendered before Heath and Knapp sued you, through Dr. Hovey? Was the Douillard judgment rendered by the Judge before Heath sued you through Dr. Hovey? Douillard got a judgment against you didn't he? A. Yes sir.

Q. Was that judgment before or after Heath and Knapp sued you? [70]

A. The friendly suit, you mean?

Q. I don't know whether it was friendly or unfriendly. They sued you and got a judgment against you and on that judgment sold all of your property.

A. Before the Douillard—Mr. Heath—

The Referee: Can you gentlemen help me out? This lady does not seem to have much idea about it. Was the Douillard judgment entered before the Hovey suit, before Hovey sued her?

Mr. Crandell: No, it was entered about fourteen days after the judgment in the Hovey suit, and the Hovey people came in and attached before the Douillard people could get around to it.

Mr. Bowden: In other words, Dr. Hovey got the property the Douillards were seeking—

Mr. Crandell: That is correct. It was just a question of which one could get there first.

By Mr. Bowden:

Q. How much money or cash did you inherit from your mother's estate?

A. I inherited a \$10,000 bequest and a one-fourth interest in all of the properties.



(Testimony of Melanie Douillard Woodd)

Q. Were you to get a \$10,000 bequest?

A. Yes sir, but I never got to touch it.

Q. When did you get that money?

A. I got that in September—the latter part, of 1938. [71]

Q. What did you do with that \$10,000?

A. I purchased the Vermont building and paid the Douillards \$4600 to equalize my one-fourth. I took my inheritance in that one building.

Q. What building is that?

A. At 824 South Vermont.

Q. That is the one you testified you sold later?

A. yes sir.

Q. Did you get that clear? A. Yes sir.

Q. Nothing against it? A. No.

Q. How much was it valued at in the distribution of the estate? A. \$15,500.

Q. How much did you get for it when you sold it?

A. \$7500.

Q. Who did you sell it to?

A. Attorney Vinecoff.

Q. Do you know him?

A. I do not. I never saw him in my life except once.

Q. When did you say you sold it?

A. I think in 1939.

Q. You didn't hold that property very long?

A. No; six months.

Q. Why did you sell it? [72]

A. It was empty; I couldn't rent it.

Q. And you got \$7500 in cash? A. Yes sir.

Q. What did you do with that money?

A. You don't want to know about my \$10,000?

(Testimony of Melanie Douillard Woodd)

Q. Well, I can't keep up with you. Now that was the \$7500 you put into the building and loan and the postal savings, was it?

A. Part of that money, yes sir.

Q. What was the rest of it?

A. The realtor fee was \$375.

Q. I am not asking you that.

A. What do you want to know?

Q. The \$7500 or whatever portion you got from the sale of the Vermont property, where did it go?

A. That is what I am telling you. I bought the Glendale property for \$2000 and fixed it up. I paid \$375 realtor fees, and escrow fees; and \$1500 for furniture.

Q. I think you went over that. You said you put \$5000 in the building and loan, and \$2000 in postal savings?

A. Yes sir.

Q. That is another \$7000.

A. That is the same money all of the time. I just had that one piece of money.

Q. You are confusing me.

A. You are trying to confuse the Referee, I think. [73]

Q. Let me ask you this question: The \$7500 that came from the property was put in the postal savings—

A. The \$7500 is here (Indicating memorandum) I went to the bank.

Q. Why did you take it out of there and put it in postal savings?

A. The bank only gives you a one-half percent and postal savings gives you three and I think the Westinghouse gave you four.

(Testimony of Melanie Douillard Woodd)

Q. Is that the reason you took it out? A. Yes.

Q. Is that the only reason? A. Yes.

Q. Did you ever have any money in the postal savings before? A. No.

Q. How long was it on deposit on the building and loan? A. Not long, I don't think.

Q. Do you have a book? A. No.

Q. What became of it?

A. I destroyed all of those things years ago.

Q. When did you destroy all of those records?

A. About 1940, I think.

Q. Now Mrs. Woodd, you have had considerable business and property transactions, haven't you? [74]

A. Yes.

Q. Have you ever kept any records of those transactions?

A. I did, but I have nothing now.

Q. Did you have complete records?

A. Yes sir.

Q. What became of them?

A. I destroyed all of them. I took sick and I had no use for them; I lost the case.

Q. In relation to the losing of the case, when did you destroy those records?

A. It was after Mr. Clements had me up in court.

Q. It was before that, wasn't it?

A. No; I brought all of the receipts. He had me up in Judge Carl Stutsman's court and had me examined to prove whether I had something.

Q. That was a supplemental examination to find out what property you had? A. Yes.



(Testimony of Melanie Douillard Woodd)

Q. And you brought some records up there?

A. Yes.

Q. And afterwards you destroyed them?

A. Yes.

Q. How long afterward?

A. A month or two, maybe.

Q. And you now have no records?

A. None of any kind. [75]

Q. From what did you compile this record you have been reading from?

A. I can tell you this with my eyes closed, but I have been sick—I was operated on two months ago and I am nervous and have been in the hospital.

The Referee: Let's don't go over all of this.

Witness: Yes sir. But all of this is of record. I lost it first and then I commenced to win.

By Mr. Bowden:

Q. Do you know Mr. Knapp's secretary?

A. I do.

Q. Does she give you any accounting of these properties?

A. No; she does not have to. I have no interest in them any more.

Q. When was the last time you did get any sort of accounting?

A. Not for years; I don't have to have any.

Q. What about Mr. Heath, did he give you any accounting?      A. No.

Q. Or Mr. Knapp?      A. No.

Q. Or Dr. Hovey?      A. No.

(Testimony of Melanie Douillard Woodd)

Q. You have complete charge of that Hobart property, have you not?

A. I collect the rents there where I live. [76]

Q. What arrangement or understanding do you have regarding your continuing to live there?

A. We have not had any.

Q. Who did you make your arrangements with first?

A. Mr. Heath.

Q. How long ago was that?

A. Years ago.

Q. Was it before or after the judgment?

A. After the property was sold, or some time through there.

Q. How long after?

A. Oh, I can't say exactly, sometime in there.

Q. What conversation did you have with him?

A. Just what do you mean? About the collecting of the rents, and why I should live there?

Q. Now look—that was your home, wasn't it.

A. It was once.

Q. And you lived there a good many years and after this friendly suit they sold it, didn't they? A. Yes.

Q. And then you say you had no further interest in it?

A. After it was sold I had no further interest in it.

Q. Now you must have had some arrangement or conversation about living in property that you had no interest in, didn't you? A. Yes sir. [77]

Q. Just tell us what it was.

A. Mr. Heath said I could live there until they sold the property. They were going to execute.

(Testimony of Melanie Douillard Woodd)

By the Referee:

Q. Who is "they"?

A. Mr. Heath and Mr. Knapp. They talked about selling the place and asked me where I would live.

By Mr. Bowden:

Q. When was that? A. In 1943.

Q. Since that time has the property ever been offered for sale or listed? A. I wouldn't know.

Q. You live there.

A. I am working every day.

Q. Have you ever seen a sign "for sale"?

A. No.

Q. Have you ever had anyone coming around looking at the property and asking the price?

A. No; just the banker came there to see it.

Q. As a matter of fact it never has been offered for sale, has it? A. I don't think so.

The Referee: We will take a ten minute recess.

(Whereupon a recess was had, after which the witness was returned to the stand and the examination continued.) [78]

By Mr. Bowden:

Q. Mrs. Woodd, what was the total appraised value of your mother's estate? A. \$70,000.

Q. Under the terms of the will you were to receive \$10,000 as a cash bequest?

A. Yes; for my kindness to my mother.

Q. And then you were to receive one-fourth of the remainder of the estate? A. Yes.

Q. And you did receive it?

A. Yes; I relinquished all my rights in all of the other properties through deeds to the Douillards and I



(Testimony of Melanie Douillard Woodd)

took my one-fourth interest and my \$4600 to equalize the one-fourth interest in that one building.

Q. And in addition to that you held in joint tenancy with your mother a piece of property which has been referred to as the Yarborough property?

A. Yes, she gave me that.

Q. And upon her death the joint tenancy was terminated and the property put in your name?

A. That is right; there was a \$2400 mortgage on that.

Q. That property was then sold to the Yarboroughs?

A. Yes sir.

Q. How much did you get for it?

A. I think it was \$800. [79]

Q. You had a note for \$800 or something around that, from the Yarboroughs, as your interest in the property?

A. Yes sir.

Q. What became of that?

A. I assigned that to Dr. Hovey through Mr. Heath as partial payment of the Hovey judgment.

Q. For attorneys' fees? A. Yes sir.

Q. When did you do that?

A. I did that right after the case, in February, 1939, I think.

Q. That was after they had executed on the property, was it? A. Yes sir.

Q. And after they had all of the rest of your property; this was all you had left?

A. That was the first piece they got.

Q. They had the Hobart property?

A. The Hobart property is the Yarborough property; there is no other Hobart property. There is the Virginia

(Testimony of Melanie Douillard Woodd)

Avenue property, and that little house on the rear faces Hobart.

Q. Well, Dr. Hovey testified and I guess you heard him?  
A. Yes sir.

Q. That the Hobart property consisted of a house known as 1152 and 1156 on Hobart and a house on Virginia Avenue, [80] is that correct?

A. No sir.

Q. Then you explain it for us.

A. The Yarborough property is 1160 North Hobart; the properties stand side by side.

Q. What is 1152?

A. That is the big house; I cut it in half and made the duplexes; that faces Hobart.

Mr. Bowden: Will the Court instruct the witness to answer the question?

The Referee: The trouble is you go over the same thing time and time again. This has been told at least twice before.

Mr. Bowden: I think that is correct, but we have had no explanation of the Yarborough property.

The Referee: All right.

By Mr. Bowden:

Q. The Yarborough property is what?

A. 1160 North Hobart.

Q. And that is how close to 1152 Virginia Avenue?

A. It touches the back end of the lot.

Q. Is it on a separate lot from the Virginia Avenue?

A. Yes sir.

Q. How large a house is the Yarborough house?

A. Five rooms.

(Testimony of Melanie Douillard Woodd)

Q. Are they still living there? [81]

A. They are.

Q. Then you assigned the note to Dr. Hovey after he got this judgment against you?

A. Well, that I cannot say. I know I assigned this through Mr. Heath as partial payment on the judgment; this note was turned in as partial payment.

Q. Then it must have been on the judgment Dr. Hovey got against you? A. Yes sir.

Q. Did you get a receipt or credit or anything of that kind from Mr. Heath? A. Did I get a receipt?

Q. Yes. A. I don't remember.

Q. How much credit did he give you on the note?

A. Well, I think there was \$668 or near \$700 balance due on that.

Q. And that was to be a part of the \$4500 judgment?

A. The \$4000 judgment.

Q. And that was assigned to Dr. Hovey?

A. Yes sir.

Q. And you got no receipt or no credit that you recall?

in the court house; it is there.

Q. Did you get any note or memorandum of it from anyone? A. I don't think so. [82]

Q. Where were you when you signed this note?

A. In Mr. Heath's office.

Q. How did you happen to be there?

A. He 'phoned for me to come in.

Q. What did he say to you when you went in?

A. Mr. Knapp had asked him for his fees or some kind of an arrangement for his fees, so I thought I would give them the Yarborough note and probably Glendale.



(Testimony of Melanie Douillard Woodd)

I didn't know how I would do it, but some way; and when I said to Mr. Knapp, "I will give you the land" he said, "I don't think much of it, I want my money", so I deeded over this Yarborough note to Dr. Hovey, but Dr. Hovey was not there.

Q. Why didn't you give it to Mr. Knapp?

A. Mr. Heath was my attorney—Mr. Knapp was called in later—Mr. Heath did not take in Mr. Knapp, I took in Mr. Knapp.

Q. Was it Mr. Heath who wanted the money of Mr. Knapp who wanted the money you were talking about?

A. Mr. Knapp wanted his money and Mr. Heath wanted his money too.

Q. What did you intend that Dr. Hovey should do with his Yarborough note?

A. I don't know; I had no dealings with Dr. Hovey.

Q. Well, with Mr. Knapp or Mr. Heath or either of them—they said they wanted their money and you said "I will sign this Yarborough note to you"; is that right? [83]

A. Yes.

Q. Didn't you ask them why it was being assigned to Dr. Hovey?

A. Did I ask them why?

Q. Yes.

A. Well, Mr. Heath told me many times he owed Dr. Hovey some money, he didn't tell me how much, and that is all I know about it.

Q. Well, who did you understand to be the owner of all these properties?

A. I understand Dr. Hovey is.

Q. He owns them himself?

A. I guess so.

(Testimony of Melanie Douillard Woodd)

Q. Do you owe Mr. Heath or Mr. Knapp any money at the present time?

A. I do. I owe Mr. Heath \$2500 and Mr. Knapp \$1500, and I don't know how many hundred dollars is tacked on now.

Q. What is this \$2500 you owe now, and this \$1500? That is in the judgment, is it not?

A. Yes sir.

Q. Then how do you figure you owe them \$2500?

A. Don't I owe them?

Q. Well, they have all of your property, haven't they?

A. Yes. Then I don't owe them anything, is that it?

Q. I am just asking you how you could owe them \$1500 and \$2500 when they have all of your property. [84]

A. Then I don't owe them anything, do I?

Q. Do you have any bills from them?

A. No.

Q. Or any note on it? A. No.

Q. Did you ever talk to them about it?

A. Not for years.

Q. Did you ever talk to Dr. Hovey about it?

A. No sir.

Q. You never had any discussion about it?

A. No sir.

Q. Now you had a piece of property which was partially condemned by the City of Los Angeles?

A. Yes sir.

Q. Where was that property?

A. There is a causeway going through the Virginia property and they were going to take the Virginia property.

(Testimony of Melanie Douillard Woodd)

Q. What did you get?

A. I didn't get anything, because it didn't go through.

Q. Didn't you get \$500 as a condemnation award?

A. Not from the Virginia property.

Q. Well, from any place.

A. No, not from any place. I think you are trying to get to the railroad, its that what you mean?

Q. Yes.

A. Well, there was a piece of my Father's property [85] that the railroad went through the estate. I didn't get that money, it was assigned to Mrs. Knapp.

Q. Who assigned it to Mrs. Knapp?

A. I assigned it.

Q. Why? A. I couldn't get it.

Q. Was it coming to you?

A. It should have. That money was attached by Heath and Knapp.

Q. At the time of the Hovey suit? A. Yes sir.

Q. So that is another \$500, is that correct?

A. Yes sir.

Q. Did you ever get any credit or memorandum showing credit for that payment?

A. I think Mrs. Knapp used that money for transcripts or books or something. I don't know; I assigned it to her.

Q. Now substantially all of the money that Mr. Heath and Mr. Knapp claimed as attorneys' fees arose from the estate of your mother?

A. Yes, but there was some before. There was quite a case before that for Mr. Heath. My brother tried to declare my mother and his mother insane; and he wasn't paid for that.



(Testimony of Melanie Douillard Woodd)

Q. But substantially all of this \$7,000 was incurred in that estate, wasn't it?      A. Yes sir. [86]

Q. Who was the executrix of your Mother's estate?

A. I was.

Q. Who represented you as the executrix?

A. Mr. Heath; he was my cosigner with me.

Q. He was your attorney in the case, wasn't he?

A. Yes; and I was under a \$30,000 bond and he was my cosigner with me.

Q. That is signing your checks?      A. Yes sir.

Q. And he was your attorney in that case?

A. Yes sir.

Q. How much fee was he allowed in that case?

A. I think the court allowed him \$1500, but that had nothing to do with the Douillard case; that was my Mother's estate; they were two different cases.

Q. In any event Mr. Heath did get paid \$1500 for his services in that estate?

A. From my Mother's estate; yes sir.

Q. And the only services that Mr. Heath and Mr. Knapp performed for you after the closing of your mother's estate was in connection with this Douillard case, wasn't it?      A. Yes sir.

Q. Have you ever had at any time an accounting with Mr. Heath or Mr. Knapp regarding their legal services?

A. No, I have not. [87]

The Referee: As I understand it, they sued and got a judgment on that, Mr. Bowden, and an execution.

Witness: Yes sir.

Mr. Crandell: That is an accounting, counsel knows that.

(Testimony of Melanie Douillard Woodd)

The Referee: Certainly; they brought a suit and got a judgment for \$4,000.

Mr. Bowden: According to her testimony she should have an accounting on the judgment; she has a lot of credit on the suit.

The Referee: She said she paid for the costs and transcripts and so forth.

Witness: That's right.

By Mr. Bowden:

Q. Did you ever get a bill for those?

A. No, I didn't. That was between Mrs. Knapp and I.

Q. Mrs. Woodd, you testified you had another account besides this Security-First National Bank, in the Citizens Bank?

A. Yes; I had the estate account there.

Q. Did you have a personal account there?

A. I don't know; I might have had, I don't know; that was years ago.

Q. Did you have any sum of money in excess of \$1000 in any account other than this Security account, at any times? [88] A. No.

Mr. Bowden: That is all, if the Court please.

The Referee: All right. Madam, you may stand aside. Do you have some more witnesses?

Mr. Bowden: I don't think so today; I am going to have to get some subpoenas, but we can put it off calendar at this time, I think.

(Court adjourned)

[Endorsed]: Filed Nov. 6, 1945. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Sept. 16, 1946. Edmund L. Smith, Clerk. [89]

[Title of District Court and Cause]

Before Hon. Hubert F. Laugharn, Referee

REPORTER'S TRANSCRIPT OF FIRST MEETING  
OF CREDITORS

Los Angeles, California. Wednesday, October 3, 1945

Appearances:

For the Trustee: Leslie S. Bowden, Esq.

For the Bankrupt: Earl F. Crandell, Esq.

Los Angeles, California. Wednesday, October 3, 1945  
2:00 o'clock, P. M. Session.

The Referee: What type of proceeding is this?

Mr. Bowden: It is an examination of witnesses under 21-A. It will probably take some considerable length of time. We have two witnesses under subpoena.

Mr. Crandell: Three.

Mr. Bowden: I understand one won't be here. The representative of the bank is here and Mr. Hovey is here.

The Referee: We have a complication on the calendar here. I wonder if you could accomplish anything by examining the representative from the bank in my chambers.

Mr. Bowden: I think we could dispose of it that way.

(Parties retire to chambers.)

Mr. Bowden: If the Court please, I was presented with a photostatic copy of the signature card and the



mortgage card of the bankrupt. I would like to have it received in evidence.

The Referee: It will be received as Trustee's exhibits. We will attach them both together and call them Trustee's Exhibit 1.

Now, is that all from this witness?

Mr. Bowden: Yes. That gives us all the information we want from the representative of the Security-First National Bank and he may be excused, if the Court please. [2]

The Referee: The witness is excused. Now are there any other matters you want to take up without a reporter?

Mr. Bowden: I don't believe so. I think we should have the entire matter reported.

(Short interruption at this point pending disposal of other cases on the calendar.)

M. L. HOVEY,

called as a witness on behalf of the Trustee, being first duly sworn, testified as follows:

Direct Examination

By Mr. Bowden:

Q. What is your name? A. M. L. Hovey.

Q. What is your business?

A. I am a chiropractor.

Q. Doctor, do you know Mrs. Woodd, the bankrupt in this case? A. Yes.

Q. How long have you known her?

A. Oh, I don't know. Let's see. About seven or eight years, I believe. I don't know exactly.

(Testimony of M. L. Hovey)

Q. Have you attended her professionally?

A. I have, yes.

Q. How long ago? [3]

A. I don't recall, but I believe about six or seven years ago. About five or six years ago, I guess it was, I gave her the first treatment.

Q. Where did you first meet her?

A. First professionally?

Q. Anywhere at all.

A. I met her in my office in the Johnson Building. I don't know what year that was. I don't recall exactly.

Q. You are not engaged in any other business, are you?

A. No.

Q. Did you have occasion to sue Mrs. Woodd some time ago?

A. That was done. Yes; that was a suit for—

Q. For attorney fees, wasn't it?

A. Yes.

Q. Who were the attorneys?

A. Well, the fees was owed to Heath and Knapp and her attorney, I don't recall his name exactly.

### Examination

By the Referee:

Q. How did you become involved in this complicated situation? It was not a bill—

A. No. It was an assignment.

Q. —that you were suing your patient on, was it?

A. Oh, no. [4]

Q. Who approached you?

A. It had nothing to do with it.

(Testimony of M. L. Hovey)

Q. Who approached you to become interested in this matter?

A. Well, I had for many years, twenty years or more, I had assigned claims and assigned suits for Mr. Heath.

Q. I see.

A. That is how it happened.

Q. For twenty years or more Mr. Heath, an attorney, had assigned claims to you upon which you acted as plaintiff and suit was brought in your name?

A. Correct.

Q. You knew Mr. Heath then long before you knew Mrs. Woodd?

A. That is right.

Q. Did she come to you through Mr. Heath?

A. I believe I was introduced to her first. That was why I was so vague, but I know I have known her because I have a vague memory of having been introduced to her in his office some time before I treated her.

Q. He was her attorney?

A. That is correct.

Q. What did he say to you in connection with being a plaintiff against her?

A. He said it was a friendly suit to establish a just legal claim on some legal matters he had handled for her and [5] the suit would be assigned to me in my name and he would sue in my name and he asked my consent to do that.

Q. Then what were you going to do after you sued and got judgment? Were you going to take Mrs. Woodd's property away from her?

A. That property was to be assigned to me until the claim was settled and the legal fee collected.



(Testimony of M. L. Hovey)

Q. You did go ahead in the suit and take the property away from this lady, didn't you?

A. Yes. And the appeals against the property, the way I understand it, all of the property has been mortgaged and there was not a very great equity in it any time.

The Referee: Any other questions?

Mr. Bowden: Yes, your Honor.

Direct Examination Resumed

By Mr. Bowden:

Q. Did you receive any compensation for your services in the matter?

A. I have received a \$100 expense account from Mr. Heath. That was to come out of this, in addition to some other personal matters between he and I.

The Referee: What does all that mean?

The Witness: Well,—

The Referee: Read the question. (Question read.)  
The question is, did you receive any compensation? [6]

The Witness: No.

The Referee: That is a pretty clear question.

The Witness: No, I have not received any compensation yet.

Mr. Bowden: Q. Have you any understanding with Mr. Heath or Mr. Knapp as to what you are to receive, if anything? A. Not yet, no.

Q. What do you mean by that? Do you intend to have such an understanding?

A. Mr. Heath, when he first assigned the claim to me, he said, "I don't believe there will be much work or inconvenience to you and what ever it turns out should be done I will compensate you for it."

(Testimony of M. L. Hovey)

Q. Mr. Heath is now deceased? A. Yes.

Q. Who do you see about this matter now; Mr. Knapp? A. That is right.

Q. How much rent, if any, have you received from the property?

A. The rent is always, until Mr. Heath's recent illness, been paid directly to the law office secretary and she has taken care of it. I don't know how much there is in that.

Q. Who is the secretary of the law office?

A. Mrs. Knapp.

Q. That is Mr. Knapp's wife, is that right? [7]

A. Yes.

Q. Do you know who paid that money in to Mrs. Knapp?

A. The tenants of the property paid that.

Q. Who collects it?

A. They pay it to me right now.

Q. They pay it to you. But who actually collects the money?

A. Well, Mrs. Smith in Glendale always sends her check by mail.

Q. Doesn't Mrs. Woodd actually collect the money?

A. No She collects the money in the house in which she lives.

Q. That is the other property? A. Yes.

Q. Do you hold the title to it? A. Yes.

Q. Does she send that money to you?

A. That money comes to me, yes. It is turned over to the bank on the loan.

Q. She lives in the house? A. Yes.

(Testimony of M. L. Hovey)

Q. Does any one else live in it?

A. There is other tenants there. I would have to look it up in my rent book to know who they are.

Q. For the purpose of the record, what is the street address of the house in which you say Mrs. Woodd lives and [8] collects rent?

A. That is Virginia and Hobart, the corner of Virginia and Hobart. I don't know the number.

Q. Do you know what type of house it is?

A. It is a large old-style house, bungalow type, divided for several tenants. I believe there are two now.

Q. What is the mortgage against it, do you know?

A. The mortgage is approximately \$2800. I don't know exactly.

Q. How long have you been collecting the rent from that place?

A. The rent has been coming to me just the last two or three months.

Q. How much is the rent?

A. I believe it is about \$70.

Q. Does Mrs. Woodd pay anything for her rent there?

A. No. She takes care of that place for me and gets her rent for that.

Q. Did you make that arrangement with her?

A. I made that arrangement that she was to do that, yes.

Q. When did you make that arrangement?

A. Oh, quite a long time ago.



(Testimony of M. L. Hovey)

Examination

By the Referee:

Q. Did you make the arrangement or did Mr. Knapp? [9]

A. Well, they suggested that I do it and I talked to her and asked her willingness to take care of it. Plumbing bills had come up and things like that that—

Q. Are you friendly with Mrs. Woodd?

A. Yes.

Q. Is she still a patient of yours?

A. Well, I have not given her any recent care, no, but occasionally—

Q. When is the last time?

A. I should judge I may give her six or eight or perhaps as much as ten treatments a year.

Q. That runs along? A. Just occasionally.

Q. This friendly litigation you have mentioned here, just what do you mean by that? Apparently this litigation has taken all of her property away.

A. Well, she had, as I understand, very little actual equity in that property. Of course, it isn't ended. I don't know yet what there is in it.

Q. You indicated something about she would pay money back or pay the bill. Just what were you referring to along that line at first?

A. That she would what?

Q. Was she to repay something and get the property back, or what?

A. No. There is no arrangement of that kind at all. I [10] don't believe she is going to have any value or any equity in her property at all.

(Testimony of M. L. Hovey)

Q. How much is the judgment, the one that you have against her, the one upon which the property was sold under execution of sale?

A. I don't remember what it was. It was around \$7,000; \$6,000, or \$7,000, I don't recall.

Q. What did that represent in the first instance, money loaned?

A. I don't know whether that was money loaned or all legal fee.

Q. Who told you it was a friendly suit, Mrs. Woodd or Mr. Knapp?

A. The original suit; that was what I was told at that time, that it was a friendly suit to establish a fair and reasonable legal expense.

Q. Who told you that? A. Mr. Heath.

Q. Oh, I see, Mr. Heath was the first who told you that? A. Yes.

Q. What did Mrs. Woodd tell you about it?

A. Well, I didn't talk with her about it.

Q. Your idea of it was it was a friendly suit to establish the amount of an attorney fee? A. Yes.

Q. For services which Mr. Heath had rendered? [11]

A. Mr. Heath and Mr. Knapp.

Q. Services Mr. Heath and Mr. Knapp had rendered?

A. If they had advanced money to her, I don't know. I never talked to her about the legal part of it at all.

The Referee: Any other questions?

Direct Examination Resumed

By Mr. Bowden:

Q. The suit was originally for \$7500 or \$7,000?

A. Yes, something like that; I don't know exactly.

Q. You took judgment for \$4,000? A. Yes.

(Testimony of M. L. Hovey)

Q. By consent of Mrs. Woodd?

A. About \$4,000.

Q. It was just an even \$4,000, wasn't it?

A. I don't know.

Q. Anyway, it is something around \$4,000?

A. Yes.

Q. It is not \$7,000? A. No.

Q. How many pieces of property did you levy on under that judgment?

A. I don't know whether that was against both properties or not. I don't know.

Q. You levied on a piece of property in Glendale, did you not? [12] A. Yes.

Q. And also on this Virginia and Hobart property?

A. I think it included both of them, yes.

Q. What is the property down in Glendale; where is it located and what type of property is it?

A. That is a single dwelling. I believe that is at 1255 Glendale Avenue.

Q. Do you know how large it is?

A. Oh, it is about a five-room house.

Q. What is the rent?

A. \$30 a month.

Q. Now, what is the size of the house at Virginia and Hobart?

A. I don't recall how many rooms there are there in that house.

Q. It is quite a large house?

A. It is a pretty good-sized house.

Q. What do you think it is worth?

A. Oh, I don't know.



(Testimony of M. L. Hovey)

Q. \$10,000?

A. Oh, no, I don't think so. Oh, no. Offhand, I would say perhaps \$5500.

Q. What do you think the Glendale house is worth, \$7500?      A. No, about \$3800, I should judge.

Q. I am not talking about values before.[13]

A. I know.

Q. I am talking about today's market. What is your opinion today as to the value of the houses?

A. That is my opinion as to about what they are worth.

Q. Have you made any inquiries?

A. Very little.

Q. Have you offered them for sale?      A. No.

Q. Why haven't you?

A. The case has not been settled. I can't transfer them. I don't want to transfer them until—

Q. I understood you had an execution.

A. That is right.

Q. And you bought them at execution sale?

A. That is right.

The Referee: Q. What do you mean? You mentioned before, Doctor, the case has not been settled. What do you mean by that?

A. Well, Mr. Knapp, the one last remaining of the original attorneys, I don't believe is satisfied. There is an appeal of some kind at the present time in regard to it, and until that is disposed of I don't see how it could be disposed of, the property, in any way.

The Referee: Whatever interest Mrs. Woodd had, as I understand it, has been lost or passed from her.

(Testimony of M. L. Hovey)

The Witness: Absolutely. As a matter of fact, I believe [14] she owed me \$200 or the attorneys, something of that kind. I don't know exactly who she owes it to.

Mr. Bowden: Q. Have you any written agreement with Mr. Heath or with Mr. Knapp as to these two properties? A. No.

Q. But as far as the record is concerned they both stand in your name now? A. Yes.

Q. Have you signed any deeds to any one affecting these properties?

A. Not that I can recall. I don't recall signing any deeds. I applied for a loan and got a loan renewed.

Q. On which property? A. On both of them.

Q. What is the loan on the Glendale property?

A. About \$770, I believe, now.

Q. And \$2800 on the Hobart property?

A. Yes, I think so.

The Referee: Q. Did they require Mrs. Woodd to sign anything when you got the loan renewed, do you remember?

A. I believe they did on one of them, yes, and the other one they did not.

Q. What was it that she had to sign, do you know?

A. I think it was a waiver of any interest, or something of that kind. I don't know exactly.

Q. How long ago was that? [15]

A. That loan was renewed about two or three months ago.

Q. That was the time when she made some type of release, was it? A. Yes.

(Testimony of M. L. Hovey)

Mr. Bowden: Q. Now, Doctor, this Hobart property was Mrs. Woodd's home, was it not, or still is?

A. Yes, she lives there now.

Q. She had a homestead on the property prior to the time you sold it at execution? A. Yes.

Q. What happened to that homestead? Just tell us generally what was done?

A. She was paid a thousand dollars, I believe, for that homestead.

Q. Who paid her the thousand dollars?

A. I paid her through Mr. Heath.

Q. What do you mean you paid her through Mr. Heath? A. Mr. Heath paid it.

Q. Did you furnish the money? The answer is yes?

A. Yes.

Q. What understanding or arrangement did you have with Mr. Heath regarding that thousand dollars or the repayment of it?

A. I didn't have any particular—for that particular thousand dollars I had no arrangement because I had more or less of a general going business with him for a number of years. [16]

Q. What do you mean by "general going business"?

A. Well, he assigned things to me of that kind, several different places, in the last twenty-five or thirty years.

Q. You had no interest in this judgment of \$4,000 that you brought? A. No direct interest in it.

Q. And now you hold title to the property?

A. Yes.



(Testimony of M. L. Hovey)

Q. With no arrangement or understanding with anybody as to what is to become of it?

A. As soon as we can clear the property then something can be done, but nothing can be done until then.

Q. What is going to be done when you acquire the property?

A. We have no arrangement made there about it, like I say. I had no agreement even with Mr. Knapp because he was not a partner of Mr. Heath's at the time he and I first entered our business arrangement together.

Q. Supposing something should happen to you, what would become of the property? Have you any ideas on that subject, Doctor?

A. Well, I don't know.

Q. Do you consider it as your property?

A. Yes.

Q. And that nobody else has any interest in it?

A. Mr. Knapp will have a legal interest in it because [17] I don't believe the bills have been paid yet.

Q. What has Mr. Knapp got coming?

A. I don't know how much he has coming on it.

Q. What has Mr. Heath coming, or his estate?

A. I believe that the original fees there was \$1500 for Mr. Knapp and \$2500 for Mr. Heath, but there is additional legal expenses. I don't know what they consist of.

Q. Do you have all of the records regarding the collection of rents and the payments under these mortgages relating to these two pieces of property?

A. Yes.

Q. Do you have them with you?

A. I have some of them and some of them are at the law office.

(Testimony of M. L. Hovey)

Q. Does Mr. Knapp have some of them?

A. Yes.

Q. Or does she have all of the records that you don't have?

A. I suppose so because I have all of the rent books and the payments to the bank from the Virginia Avenue place. I don't believe I have the bank book either, but I have the bank book for the other property on Glendale Avenue.

Q. When Mrs. Woodd was given this thousand dollars to pay off her homestead what conversation did you have with her regarding that matter?

A. I did not have any conversations at all with her. [18]

Q. Who did you have a conversation with?

A. Mr. Heath took care of that entirely.

Q. Didn't you talk to him about it?

A. Yes, he asked my consent.

Q. Just tell us what he said and what you said and how it came about?

A. Well, he said she wanted a thousand dollars for her homestead on that place and asked what I thought about it. I told him it looked to me like it was worth it.

Q. Did he ask you to furnish the thousand dollars?

A. Not directly, no. Mr. Heath owed me some money then.

### Examination

By the Referee:

Q. Who furnished the thousand dollars? Let's get that transaction.

A. That was out of him. He paid it then.

(Testimony of M. L. Hovey)

Q. Who handed the money to Mrs. Woodd?

A. That I don't know.

Q. You did not see that? A. No.

Q. He told you that he had taken care of it?

A. That is right.

Q. You had no part of that at all?

A. That is right.

Q. How long ago was that? Was that shortly after you [19] filed the suit or after the execution sale?

A. I don't remember.

Q. How many years ago was it, would you say?

A. I would say about five maybe.

Q. Then it was near the inception of the litigation, wasn't it? A. Yes.

Q. Probably some time after the sale?

A. No, it was before the sale. I don't know, to tell the truth.

Q. That date can be fixed, I assume. He told you a thousand dollars had been given to Mrs. Woodd?

A. Why, Mr. Heath did.

Q. You don't know then that a thousand dollars was given to her other than that statement? A. No.

Q. You did not see it? A. No, I didn't, no.

Q. You did not ever see a check, did you?

A. No, I don't recall that.

Q. So that would be the source of your information?

A. Yes.

Q. Possibly Mrs. Woodd told you, did she, or don't you know?

A. I don't remember talking to her about it.

Q. Of course you would not put up a thousand dollars [20] yourself, would you? You were merely acting as plaintiff? A. That is right.



(Testimony of M. L. Hovey)

Q. You were not expecting to get anything out of it except a nominal amount? A. That is right.

Q. Would you say about \$100 or \$200 for your trouble, or was it more than that?

A. I think this ran into considerably more than that, actually, now.

Q. Did you have an account with the attorney as to how much you had coming from him or he to you?

A. In regard to this case, no.

Q. Or other cases? A. In other cases.

Q. What was the condition of that account at his death. How much did you owe him or how much did he owe you? A. He owed me about \$1200.

Q. About \$1200? Then you were holding this, or you were holding this property as security for a repayment of that? A. Yes.

Q. Does that \$1200 include also what you were to get for acting as the nominal party-plaintiff?

A. That is right.

Q. It was in that amount? A. It included it.

Q. So far as you are concerned now whoever owns this [21] property, whoever is the actual ultimate owner, you are holding it for \$1200 that Mr. Heath owes to you?

A. He personally owed me \$1200 and when the case is settled he and I was to settle.

Q. Which means before he asked you for the release of this property you assumed he would pay you the \$1200. A. Yes.

(Testimony of M. L. Hovey)

Mr. Bowden: Q. Doctor, I am a little confused. You said a few moments ago you furnished the thousand dollars.

A. Well, that is the way in which I furnished it. Mr. Heath—

Q. Is this thousand dollars part of the \$1200 you are talking about? A. Yes.

Q. So Mr. Heath does not owe you?

A. The thousand dollars put up for the homestead?

Q. Yes. A. Oh, no, not—

Q. Didn't you say a few moments ago you furnished the thousand dollars to pay off Mrs. Woodd?

A. That came out of Mr. Heath's pocket, but it was out of what he owed me for temporary use.

The Referee: Just keep on talking and maybe you will finally explain it. Don't interrupt him any more. You go ahead. You have the floor. You just explain it and we will try to digest some of the facts. Just go ahead and explain it. [22]

The Witness: Mr. Heath and I had worked indirectly together a number of years on many different accounts and we had never come to a settlement. Whenever I wanted some money I would go to him and get ten dollars or one hundred dollars or something that I needed and we never had a settlement. When his health began to break he began to talk about getting things in shape between us, but he expected up to the last to be able to get out and get into court and straighten these things out. So I have actually been left up in the air in regard to his case. I feel that I have got \$1200 equity coming out of it for the work I have done for Mr. Heath. And that is just about all there is to it. And I don't know how much legal fees are. I have talked with Mr.

(Testimony of M. L. Hovey)

Knapp and he said if I insisted on getting that much there would be absolutely nothing and, as a matter of fact, she would still owe the balance on the execution.

The Referee: Q. How much?

A. I don't know. He said it would be around \$200. That is why I mentioned it awhile ago.

Q. Now getting back to the \$1200 and the \$1,000 payment I haven't got that quite clear yet. Let's go back and cover that.

A. The business arrangement between Mr. Heath and I was over several years and the thousand dollars that he put up for the homestead price I have no idea whether he took it out of my account that he owed me or took it out of his own [23] pocket. I don't know. I have no idea where that came from. But I know that he owed me a thousand dollars for some years back and I was to get it out of this case when it was settled. I wonder if that clears that up?

Q. Yes. It at least gives another angle to it. You have a thousand dollars. I thought it was \$1200.

A. Yes. \$200 of expenses and a thousand dollars that he owed me from several years back.

Q. I see. Now, for several years back, that was before this litigation? A. Yes, long before.

Q. Long before this litigation Mr. Heath owed you a thousand dollars?

A. (Witness nodding head in the affirmative.)

Q. What did you owe Mr. Heath, if anything?

A. I don't know.

Q. If Mr. Heath owed you a thousand dollars and you owed Mr. Heath \$900 then the balance would be \$100 in your favor, wouldn't it? A. No.



(Testimony of M. L. Hovey)

Q. Mr. Heath years before this litigation owed you a thousand dollars, is that right?

A. That is right.

Q. Now we have got that. And he still owes it to you?

A. That is right.

Q. That is, up to the time of his death. Now, did you [24] owe any money to Mr. Heath?

A. No.

Q. Then the account was balanced in your favor for a thousand dollars?

A. He still owed me some legal fees for the frequent trips I have made from my office, like this venture, where I have to be away, and that was to come in as part of the expense account of this suit—the \$1,000.

Q. Oh, I see. That is in addition to the thousand dollars?

A. Yes.

Q. And that you estimate would build it up to \$1200?

A. That is right.

Q. Your account with Mr. Heath is really in two categories: one is the \$1,000 long before this litigation, and the other is the accumulation of small expenses aggregating \$200 attributed directly to this litigation?

A. Not entirely so. I think I have got myself involved there because I was to get \$1200 out of this as my part of handling this, taking care of this, but I told him if he could get it straightened out we would forget the rest, the old account, and that would just come to \$1200 for the whole thing.

Q. In other words, for handling this litigation and being the plaintiff over all of these years you were to get \$1200? [25]

A. Yes.

Q. When the property was sold?

A. Yes

Q. Did you agree with him that that would be a fair compensation for those services?

A. Yes.

(Testimony of M. L. Hovey)

Q. What did those services consist of generally, that is, being the plaintiff and appearing here today? I imagine you had to appear in court, didn't you?

A. Many times, I think.

Q. And you made rental collections?

A. Yes, sir.

Q. And the release on this refinancing, you had to sign the papers, didn't you? A. That is right.

Q. For those services then, inconnection with this litigation, you were to get \$1200 and the property was then more or less held by you as security for the payment of that? A. That is right.

The Referee: Any other questions?

Direct Examination Resumed

By Mr. Bowden:

Q. Did you collect any rent from either one of these properties up until the time of Mr. Heath's death?

A. At the time of his illness I began to collect rent, [26] just before his death.

Q. But not prior to that time?

A. No, that was taken care of in the office.

Q. Who took care of it?

A. Well, Mr. Heath or Mr. Knapp, I don't know which.

Q. You did not have anything to do with it?

A. I went out to see the property first when it was first sold.

Q. But I mean you did not have anything to do with it?

A. I did not have anything to do with the business.

Q. Handling the money or paying on the trust deeds or anything? A. That is right.

(Testimony of M. L. Hovey)

Q. Was there any accounting made to you as to what was done in that respect? A. No.

Q. That is, how much rent was collected and how much was paid out in taxes or on the trust deeds or accounts?

A. I think all of those bills were retained there in the office and no settlement was made.

Q. Mr. Heath and Mr. Knapp officed together, did they not? A. Yes.

Q. And they did up until the time of Mr. Heath's death? A. Yes.

Q. Why did you take over the management of these [27] properties upon Mr. Heath's illness?

A. Mr. Heath suggested that I had better do that, that he could not take care of those things.

Q. Did you have any conversation with Mrs. Woodd about that? A. No.

Q. When did you last talk to Mrs. Woodd about this property or this case of yours?

A. Well, I have always refrained from talking to her about it other than she would take care of the bills and she would notify me when an expense was involved and occasionally she would call Mrs. Knapp and Mrs. Knapp would call me.

The Referee: Q. To take care of what bills?

A. She would take care of the general up-keep and the small things that would occur.

Q. But she lost this property, you had taken it away from her, isn't that correct?

A. Yes, but she is doing that because I don't get around very well and somebody has to do these things for me.



(Testimony of M. L. Hovey)

Q. But she has no interest in the property?

A. No, she has absolutely no interest in the property.

The Referee: Any other questions, Mr. Bowden?

Mr. Bowden: Q. Doctor, you have known Mrs. Woodd and some of her relatives and brothers and sisters for a good [28] many years?

A. I met a nephew of hers some years ago.

Q. Didn't you live in one of their houses for some period of time?

A. Not that I know of. That Vermont property was at one time in here name, I believe.

Q. That is what I am coming to. You lived in the Vermont Avenue property?

A. Yes, I moved in there one time.

Q. How long ago was that?

A. Well, I lived there approximately three years ago.

Q. Was Mrs. Woodd living there? A. No.

Q. Who was living there?

A. There was nobody there. I paid my rent to Mr. Heath.

Q. To Mr. Heath? A. Yes.

Q. And Mrs. Woodd owned the place?

A. I don't know whether she owned the place at that time or not. I don't think so. I believe I was there when that place was sold by the bank. I received a notice that it was being sold, as one of the tenants.

Q. Mrs. Woodd sold it, did she not?

A. I don't know who sold it.

Q. You don't know anything about that?

A. No, I don't. [29]

(Testimony of M. L. Hovey)

Q. Now, after Mrs. Woodd received her thousand dollars from this homestead it is your contention she had no further interest in the place?

A. That is right.

Q. Did you have any further conversation with Mrs. Woodd or Mr. Heath regarding what was going to be done with the house after the thousand dollars was paid Mrs. Woodd?

A. I don't remember.

Q. Did you discuss it with Mr. Heath?

A. I never discussed it with Mrs. Woodd at all.

Q. Well, did you discuss it with Mr. Heath?

A. I don't recall discussing it with him.

Q. You weren't collecting the rents at that time?

A. No.

Q. You must have discussed it with somebody, didn't you, Doctor?

A. The homestead payment?

Q. No. What arrangements you were going to make with her, did you discuss that?

A. No. Mr. Heath asked if I didn't think it was all right to have her look after the property as long as she was right there.

Q. Is that all he said to you about it?

A. That was all that was said about it.

Q. How many apartments are in that property? I am referring to the Hobart property? [30]

A. Well, I don't know.

Q. How many tenants are there?

A. There is two or three tenants there. I don't know exactly.

Q. What does each one of them pay?

A. As to that I don't know either.

(Testimony of M. L. Hovey)

Q. Have you ever seen the property?

A. Oh, yes.

Q. When were you there last?

A. Oh, I treated a patient in that house about a year ago.

Q. Have you seen the property in the last few months?      A. No.

Q. You don't know the names of the tenants or how many there are or what they pay?

A. I don't know exactly. I believe the rental, the income, the way I remember it, is around \$70 a month. That is all I recall about it.

Q. Mrs. Woodd sends that money to you every month?

A. That money is sent to the bank or to the law office.

Q. What is that for, do you know?

A. Well, I believe Mrs. Knapp is taking care of it. I think she makes the payments to the bank. I don't make the payment to the bank.

Q. Have you any arrangement with Mrs. Knapp about the property? [31]

A. Nothing. She is taking care of all of those things and calls me when necessary.

Q. It is never necessary, is it?

A. Occasionally she calls me.

Q. You don't know the amount of taxes or how much the water bill is or how much they pay on the trust deed or who pays it or when? It would not be necessary to call on you for anything, Doctor?

A. It shouldn't be.



(Testimony of M. L. Hovey)

Q. In other words, you don't know anything about it?

A. I don't know very much about it.

Q. You did not take much interest in it?

A. Yes, I do now. Mr. Heath is not here to take care of those things and I am quite interested now.

Q. Have you had any conversations with Mrs. Woodd about it recently?

A. No, except that I told her to go ahead and take care of it just the same as previous to the sale.

Q. For that service she gets her living there?

A. She gets her rent.

Q. What is her apartment or the space that she occupies there, do you know?

A. Oh, I don't know exactly but I should judge about \$25.

Q. About \$25 a month? A. Yes. [32]

Q. Do you think it is worth \$25 a month to collect \$70 a month?

A. She takes care of the place and looks after it. There has to be somebody on the place.

Q. Mr. Heath is gone now. This property is in your name. Who is going to make arrangements regarding the management of the property and the disposition of it hereafter?

A. I will have to do that, and Mr. Knapp.

Q. You and Mr. Knapp? A. Yes.

Q. Now, what conversation have you had with Mr. Knapp regarding that property since Mr. Heath's death?

A. I have not had a chance to go down since the day of the funeral to talk to Mr. Knapp. I have talked to him on the telephone a few times and keep promising

(Testimony of M. L. Hovey)

him I will come in to see him, but I have not been in there.

Q. What conversation did you have with him on the telephone regarding the property?

A. I want him to look after Mr. Heath's interest and my interest in there. He was surprised that I felt I had as much interest in it as I do think I have.

Q. In other words, you and Mr. Knapp do not agree on the amount of money you have got coming when this property is sold, is that right?

A. I don't know. I have never talked to him about that.

Q. What do you mean he felt a certain way? [33]

A. Well, he didn't know Mr. Heath ever owed me anything. My arrangements always have been with Mr. Heath and never at any time with Mr. Knapp.

#### Examination

By the Referee:

Q. That is, that Mr. Heath owed you money?

A. Yes.

Q. That is money you had loaned to him?

A. Yes.

Q. Is that what the thousand dollars or \$1200 is?

A. I was to make out a statement of this. It is in addition to that. But the \$1200 that I figure was due from the first sale that is available.

Q. Mr. Knapp did not know or express surprise when you told him that Mr. Heath owed you \$1200?

A. He did not know he owed me that much.

Q. Why does Mr. Heath owe you \$1200, or did he, at the time of his death?

A. Yes, he did.

(Testimony of M. L. Hovey)

Q. For what?

A. For the sale of a farm I had in Nevada.

Q. Who took the money? A. I used it.

Q. You loaned him the money?

A. I loaned him the money. [34]

Q. Then Mr. Heath owed you \$1200 or \$1,000, which?

A. A thousand dollars, approximately.

Q. Because you loaned him a thousand dollars?

A. I loaned him that, that is right.

Q. And he was to pay it back?

A. And he was to pay it back out of this.

Q. That is why he owed you the thousand dollars?

A. Yes.

The Referee: Any other questions.

#### Direct Examination Resumed

By Mr. Bowden:

Q. Have you any books, Doctor, showing your business transactions with Mr. Heath?

A. No, I haven't.

Q. You kept no records at all? A. No.

Q. You do keep records, don't you, of your patients and so forth?

A. I keep records of my own professional work.

Q. But you do not keep records of any business in connection with lawsuits?

A. With this legal work, none at all.

Q. Why don't you keep records?

A. Well, I never thought it was necessary. Mr. Heath took care of all that. [35]

Q. How would you determine what Mr. Heath would owe you if you wanted to determine that quickly?

A. I would have to ask him.

Q. If he is not here you wouldn't know, would you?



(Testimony of M. L. Hovey)

A. That is right.

Q. So you don't know if he owes you anything or not?

A. He owes me quite a little because I have drawn no money for a long time and I used to.

Q. You cannot itemize them, can you?

A. No, I don't think so. I don't think I can.

Q. I might have asked you this before, Doctor. It is a little confusing sometimes. I understood you to say recently that they have been sending you the money on this Hobart property?

A. No. The Virginia or the—

Q. Glendale?

A. The Glendale Avenue property.

Q. That is the property.

A. The Glendale Avenue, since the renewal of the lease, comes directly to me because I have to sign at the bank and I am responsible to the bank.

Q. What is the name of the tenant in the Glendale Avenue property?

A. Mrs. Smith, Florence Smith.

Q. Who is she, do you know?

A. I don't know other than she is the tenant, that is [36] all I know.

Q. Is she any relative of Mrs. Woodd?

A. Not that I know of.

Q. Is she any relative of yours?                      A. No.

Q. And the rental is \$25 a month?

A. No, I believe it is \$35.

Q. Don't you know exactly what it is, Doctor?

A. I was told by Mr. Heath that that property originally rented for \$40. I believe Mrs. Smith is to get the place for \$35 for taking care of the lawn.

(Testimony of M. L. Hovey)

Q. You have been getting the rent there. Don't you know how much rent she has been paying you?

A. Right at this minute I couldn't tell you whether it was thirty or thirty-five.

Q. When did you last get a check?

A. Oh, let's see—

Q. The first of the month?

A. About the first of last month, about the 5th or 6th.

Q. Was that to be for this month?

A. It paid for October or for September.

Q. But not for October?      A. No.

Q. You don't remember how much money you got for September?

A. I don't know whether she sent—I believe it was [37] a \$35 check, but I don't remember.

Q. How would you know she is sending you the right amount of rent for it if you don't know? Have you any way of checking that?

A. I would have to go and look it up on the other old rent receipts, that is all.

Q. Have you any lease with this Mrs. Smith?

A. No, that is a month-to-month affair.

Q. How long has she been in the property?

A. She has been there quite a long time. I don't know how long.

Q. A year?      A. I don't know.

Q. Three years?

A. It could be for all I know.

Q. Was she in there before you acquired the title?

A. I don't know.

Q. Mrs. Woodd took care of all these details, did she not?

(Testimony of M. L. Hovey)

A. She did all of the running around, she or Mr. Heath, one or the other. Sometimes I believe Mrs. Knapp went out there and got it.

Q. How much money have you collected from Mrs. Smith altogether?

A. I think she sent me only one check.

Q. Only one check? [38]

A. Yes, since the renewal of that mortgage. The mortgage was renewed a few days after her check was mailed and it was mailed to the office, to the law office, and then I had written her a written request to send it to me and she replied that she had already sent it to Mr. Heath's office.

Q. What bank holds the mortgage on the place?

A. Security Bank.

Q. What bank? A. Sixth and Spring.

Q. And the amount is \$770, you say?

A. I don't know about that. I can't tell you exactly. I don't know.

The Referee: Mr. Bowden, let me interrupt for a moment. How long will the examination in the Woodd case take? Do you have other witnesses?

Mr. Bowden: This will take a considerable time, if the Court please.

(Discussion in re continuance omitted. The matter was then continued to October 16, 1945 at 2:00 o'clock, p.m.)

[Endorsed]: Filed Nov. 8, 1945. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Sep. 16, 1946. Edmund L. Smith, Clerk. [39]



[Title of District Court and Cause]

Before the Hon. Hubert F. Laugharn  
Referee in Bankruptcy

TRANSCRIPT OF HEARING ON EXAMINATION  
OF THE BANKRUPT, HELD ON FRIDAY,  
DECEMBER 13, 1946, AT 2:00 P. M.

\* \* \* \* \*

Appearances:

Leslie S. Bowden, Esq., appearing on behalf of the  
Trustee.

A. T. Stewart, Esq., appearing on behalf the Bankrupt.

The Referee: In the Matter of Melanie Douillard  
Woodd. What is this, an examination?

Mr. Bowden: This is an examination, if the Court  
please. It was on the calendar the other day, but we  
were unable to get service.

Mrs. Woodd, will you take the stand, please.

MELANIE DOUILLARD WOODD,

the Bankrupt herein, called as a witness on behalf of the  
Trustee, having been first duly sworn, testified as fol-  
lows:

Direct Examination

By Mr. Bowden:

Q. Mrs. Woodd, you are the Bankrupt in this pro-  
ceeding? A. Yes.

Q. Where do you live now?

A. 5255 Virginia Avenue.

Q. Is that the place you lived at the time you filed  
your petition in bankruptcy? A. Yes.

(Testimony of Melanie Douillard Woodd)

Q. You have been living there ever since that time?

A. Yes.

Q. Do you have a telephone there?

A. No, sir.

Q. Who lives with you, Mrs. Woodd? [2]

A. I have my nephew living with me, Louis A. Douillard.

Q. What is his name?

A. Louis. He is the son of Frank Douillard.

Q. How old is he? A. Thirty-five.

Q. What does he do, work?

A. He works at—it is over at Warner Brothers. I am not sure of that. It is at the Sunset Studios in Hollywood, I believe.

Q. Is he regularly employed? A. Yes.

Q. Who owns the property that you live in?

A. I do today.

Q. How long have you owned it?

A. About a month, I think.

Q. About a month?

A. About a month, I think. I haven't received a deed. You know, the deed hasn't come back yet.

Q. Who gave you the deed? A. My nephew.

Q. Do you know where he got it?

A. Yes. He bought the property from Dr. Hovey.

Q. How much did he pay for it?

A. I think he paid \$500 for it.

Q. Do you know how much the property is worth? [3] A. No, I don't.

Q. Have you any idea?

A. No, sir, I haven't.

(Testimony of Melanie Douillard Woodd)

Q. What does the property consist of, generally?

A. A large house with a little house in back.

Q. How large is the house?

A. The front house?

Q. Yes.

A. I would say about seven rooms subdivided.

Q. How large is the rear house?

A. Three rooms.

Q. Do you live in the front house or the rear house?

A. The front house.

Q. Who lives in the rear house?

A. A Jewish lady, Mrs. Sogel.

Q. Does she pay rent? A. Yes.

Q. How much? A. \$20 a month.

Q. Is there anything against the property in the way of a trust deed or anything of that kind?

A. Yes, there is a \$2800 mortgage.

Q. What is the balance on it now?

A. About twenty-three or twenty-four hundred dollars, something like that.

Q. That is payable at \$28 a month? [4]

A. \$30 a month.

Q. \$30? A. \$40, yes.

Q. You formerly owned this property, didn't you?

A. Yes.

Q. Where did you get it in the first instance?

A. Let's see. Well, I sold the Vermont property and took the money from there and bought that. I bought it for \$5000. I paid down \$1000 and at \$40 a month for a while and then I place another thousand and I think later on I placed another thousand. All of this money was out of the balance.



(Testimony of Melanie Douillard Woodd)

Q. Of that estate, Mrs. Woodd?

A. Yes. Would you call it? No, that would be my money. The estate was settled and the Vermont property, my quarter of my share, which would have been \$15,000 came out of that property. I got the property and paid the Douillards almost \$5000. It was \$4700, or something like that.

Q. Your mother's name is Mrs. Donohue?

A. Mrs. Emily Selena Donohue.

Q. Didn't you own this property we are speaking of in joint tenancy with her at one time?

A. No. I owned the 1160 North Hobart, which is the property in litigation right now with Virginia L. Yarbrough,—and Mr. Clements, being the attorney, [5] but I have nothing to do with that. I signed that away as partial payment, the note on that as partial payment, some years ago.

Q. Did you pay your nephew anything for this property?

A. No, sir, I didn't. It was for love and affection.

Q. For love and affection?           A. Yes, sir.

Q. You had some Glendale property, didn't you?

A. At one time, yes, sir.

Q. What, if anything, happened to that?

A. That was sold at sheriff's sale and so was the Virginia Avenue sold at Sheriff's sale to Dr. Hovey.

Q. Who owns the Glendale property now?

A. That I don't know, sir.

Q. Has it been sold?

A. Yes, it has been sold.

Q. Did you execute a note and trust deed on that property?           A. In Glendale?

(Testimony of Melanie Douillard Woodd)

Q. Yes.

A. No. I have nothing to do with Glendale ever since it was taken away from me.

Q. In August, 1945 didn't you borrow \$780 or something like that on that property?

A. No. That was the balance of the mortgage left there. Mr. Garnier bought that. [6]

Q. Who is Mr. Garnier?

A. He is a real estate man.

Q. Is he a friend of yours?

A. Yes, we are friendly.

Q. How long have you known him?

A. About seven or eight years. He sold all of my pieces of property.

Q. When did he buy the Glendale property?

A. Well, while we were in court here last December, I think. Now then, you will have to see Dr. Hovey about that transaction.

Q. What do you know about it, Mrs. Woodd?

A. Nothing, just that.

Q. How do you know Mr. Garnier bought it?

A. Because Mr. Knapp told me and told my attorney, Mr. Crandall, at the time.

Q. When did Mr. Crandall tell you that?

A. Oh, it has been a long time ago.

Q. Was it during the proceedings?

A. Yes, while we were in court here.

Q. Who was present when Mr. Knapp told you about that? A. Mr. Crandall.

Q. Did anybody else? A. No.

Q. What did Mr. Knapp say to you at that time? [7]

A. He said he sold the property.

(Testimony of Melanie Douillard Woodd)

Q. He said something besides that, didn't he?

A. Oh, I don't know what else.

Q. Did he say how much it was sold for?

A. No, he didn't.

Q. Did he say what he was going to do with the money?

A. No, he didn't.

Q. He just said that he sold the property?

A. That is right, or he was going to sell it or he sold it, I don't know.

Q. What did you say to him?

A. Nothing. What could I say?

Q. What was the occasion of his telling you that?

A. I went up there and he told me.

Q. At that time Mr. Crandall was representing you and not Mr. Knapp?

A. Mr. Crandall.

Q. What was the occasion for Mr. Knapp calling you and Mr. Crandall to his office to tell you about this property?

A. I went up to Mr. Knapp for data to help me about my assets, you know, about how much money,—you know, about helping me with my money. Oh, I can't express myself.

Q. Maybe I can help you, Mrs. Woodd. I see that you might be a little confused. [8]

A. Yes.

Q. You had to get a lot of information together for a hearing in court?

A. That is right.

Q. About what you had done with the money?

A. That is right.

Q. Does that help you?

A. Yes. And the Glendale came in there and the Virginia came in there and the note came in there.



(Testimony of Melanie Douillard Woodd)

Q. So you went up to Mr. Knapp's office to get information?

A. Sure; and he helped me for an hour or so.

Q. Is that the occasion he told you that?

A. Yes.

Q. Why did he say the Glendale property was sold?

A. I can't say. You will have to ask him about that.

Q. Do you know how much Mr. Garner paid for it?

A. No, sir, I don't.

Q. Approximately?                      A. No, I don't.

Q. You have no idea?

A. No. The bank could tell you that.

Q. Who?

A. Why don't you go down to the bank. They dealt with the Security Bank evidently.

Q. What bank was it, Mrs. Woodd? [9]

A. The Security Bank held the mortgage on it. Let's see what one was that? Sixth and Spring. All of the transactions on the Glendale property were there. You can get that from Mr. Kale. Mr. Garnier sold that property.

Q. They do not seem to know anything about that particular transaction down there. I thought you could give me the information.                      A. No.

Q. That was where the property was sold to Mr. Garnier?                      A. Yes, to Mr. Garnier.

Q. Do you know where the escrow was held—that is what I have been trying to locate, the actual escrow—what branch?

A. Mr. Garnier should be able to tell you that. I had nothing to do with that. I didn't deal with that.

(Testimony of Melanie Douillard Woodd)

By the Referee:

Q. You had nothing to do with it and got nothing out of it?

A. That is right, Mr. Laugharn, nothing.

Q. I think we should talk to Mr. Garnier then.

A. Yes, let them talk to him about it.

Q. When did he buy it, do you know?

A. I think last December, sir.

The Referee: Any other questions?

By Mr. Bowden: Q. Take a look at that photo-static copy, [10] Mrs. Woodd. Is that the deed or copy of the deed that your nephew gave to you?

A. No. That is wrong. Where is the Selena Woodd on there?

Q. Take a look at it.

A. Oh, yes. Selena Woodd, that is me, that is right.

Q. Is that one name that you are known by?

A. Well, yes, that is my middle name. I don't want to use the name Douillard any more. It has brought me so much shame, humiliation and sickness that I don't care to use it any more.

Q. So you are using the name of Selena now?

A. I am using the name Selena now. I am using my mother's name.

Q. That is the same property we have been talking about?

A. That is the same property we have been talking about and I am the same person.

Q. That is your nephew's signature?

A. That is right.

Mr. Bowden: I would like to have this marked, if the Court please, on behalf of the creditor, J. M.

(Testimony of Melanie Douillard Woodd)

Clements, for the attorney for the creditor, J. M. Clements.

Q. Now, your nephew is Louis Alfred Douillard?

A. Yes. He is a GI Joe.

Q. You say he bought it in September? [11]

A. Yes, sir.

Q. Would that be approximately the thirteenth of September? A. It might be.

Q. He made a deed to you about the same date that he got the deed? A. A day or two after.

Q. A day or two after? A. Yes.

Mr. Bowden: I have a photostatic copy here, if the Court please.

The Witness: He was afraid he might get killed or might have to go off to war.

Mr. Bowden: (Continuing) Grant deed to M. L. Hovey and Anna L. Hovey to Louis Alfred Douillard, Sr., an unmarried man covering the same property, executed at Glendale in September, 1946. It shows Internal Revenue stamps fifty-five cents cancelled. It was recorded September 13, 1946 in the County Recorder's Office.

Q. Have you had any conversation with anybody about this transaction, Mrs. Woodd? A. No.

Q. Have you had any conversation with your nephew about it? A. About this?

Q. Yes. Have you talked to him about it? [12]

A. Lately, do you mean?

Q. At any time about this transaction where you received this property?

A. When he gave it to me?

Q. Yes, or at any other time?

A. Well, I told him it was going to be sold.



(Testimony of Melanie Douillard Woodd)

Q. When was that?

A. Well, that was—let's see, I saw Mr. Knapp. I went up there while this property was still in Dr. Hovey's name and I went up to tell him there was a large tree going to fall. He became angry and disgusted, I guess, and he said, "Well, I will sell."

Q. When was that?

A. Well now, I can't tell you what that date is.

Q. This year some time?

A. Yes. The tree did fall.

Q. It was in the spring, wasn't it?

A. I guess so.

Q. About March?

A. About March. The tree fell down and instead of falling on me it fell in the street. Then another large tree had to be taken out, an immense tree. It cost my nephew nearly \$100 to take it out. It was leaning at about a forty-five degree angle and he had to take it out.

Q. When did he have to spend \$100 to take the tree out, was that in the spring? [13]

A. He was the owner then. No, that was now, lately, in December, when Douillard was the owner.

By the Referee:

Q. When was the tree taken out?

A. In September, I think, sir. One was taken out and the other one fell.

Q. The other one what?

A. The other one fell. It might be in the spring. I could find that out. I have a receipt for the tree that was taken out, but the one that fell, the City took care of that.

(Testimony of Melanie Douillard Woodd)

Q. Why did your nephew have to pay for taking the tree out?

A. The City wouldn't do it for nothing.

Q. Why did he have to pay for it?

A. Because he was the owner then.

Q. It cost \$100?

A. \$95, I think. They had to have one of the big city trucks—they had to get a special kind to do it.

By Mr. Bowden:

Q. So after Mr. Knapp told you he was going to sell you told your nephew to buy it?

A. Yes. It frightened me. I went home. I was sick. I didn't know where I would move to. He didn't know where he was going to move to. He heard it was for sale and took it upon himself to go down. I had company with me, and [14] he took upon himself and went down to see Dr. Hovey and they had their transaction together.

Now, you will have to ask Dr. Hovey and him what they said and did.

Q. What did your nephew tell you about it?

A. Nothing.

Q. He just went down and bought it?

A. He talked with him. He don't talk much.

Q. Did you go with him? A. No.

Q. Didn't you go up when the deed was made?

A. No.

Q. Where was the deed made?

A. I don't know.

Q. You don't know? A. No.

Q. When did you first see that deed?

A. His deed?

(Testimony of Melanie Douillard Woodd)

Q. The deed to you?           A. The deed to me?

Q. Yes.

A. I got nothing to do with that. I don't know where he had the deed made. He brought it to me all signed and he gave it to me.

Q. When was that?

A. About September 13, I think, right around in [15] there.

Q. He told you he had paid \$500 for it?

A. For his transaction with Dr. Hovey. His deed was put, or recorded, sir. He didn't have to give me his deed.

Q. It was recorded—period?

A. That is right. But the \$500 was between him and Dr. Hovey, not between him and me.

Q. That is right, but he told you he paid \$500?

A. That is right and he has got his check.

By the Referee:

Q. Did you talk to Dr. Hovey yourself in connection with the sale?           A. No, sir.

Q. Did you ask Mr. Knapp what the property would be sold for?

A. No, sir. I will tell you, Mr. Crandall told me and some friends I have to keep away from Dr. Hovey, that I have nothing to do with him, and there had been so much through this whole mess and so many lies—Dr. Hovey has never done anything for me or promised me anything or I for him. He was for the lawyers or to protect the lawyers. As a lawyer, you will understand that, but he wasn't protecting me.



(Testimony of Melanie Douillard Woodd)

By Mr. Bowden:

Q. Who was protecting you? [16]

A. Nobody.

By the Referee:

Q. When you went into see Mr. Knapp you say he was sort of worried?

A. Yes, because I had named him in this bankruptcy.

Q. Did he tell you how much Mr. Hovey would sell the property for or how much he wanted as a fee?

A. No, sir.

Q. Apparently Mr. Hovey was holding the property as you recall now for Mr. Knapp?

A. He was an assignee.

Q. Holding it for him? A. Yes.

Q. In other words, it was really Mr. Knapp's property, isn't that it?

A. I would imagine so, yes, sir; but the deeds were in Dr. Hovey's name.

Q. Yes, but as I recall the facts, we had a hearing here—I am rather hazy on that—but Dr. Hovey, you might say, was acting as the agent for Mr. Heath and Mr. Knapp?

A. Yes, mostly Mr. Heath, I think.

Q. Did Mr. Knapp approve of the price or Dr. Hovey? A. I don't know.

Q. You don't know about that?

A. That I don't know. [17]

Q. You don't know about that?

A. That I don't know. I would readily tell you if I knew. I would be glad to.

(Testimony of Melanie Douillard Woodd)

Q. If Mr. Knapp was the real owner and it was merely in Dr. Hovey's name, I suppose he would approve the sale?      A. The sale?

Q. That is, Dr. Hovey would not want to give it away, would he?      A. No.

Q. Without anybody's consent? Do you have any idea how much Mr. Knapp wanted for the property?

A. No.

Q. Then that evening you told your nephew what had taken place?

A. Yes. He was going to sell and I told him.

Q. The next day he went to see Dr. Hovey?

A. He did.

Q. And bought the property while he was there?

A. I don't know if he did it right then and there, but it was right soon in there some way.

Q. At least Dr. Hovey told him he would sell for \$500 subject to the \$2300 balance of the mortgage or whatever it was; he would sell the property to him for \$2800, or whatever it was?      A. I guess so. [18]

Q. And he paid his money over to him?

A. He paid his own money, sir.

Q. Did he give a check or pay cash?

A. He gave him a check, sir.

Q. How do you know that?

A. He showed me the check that he had.

Q. He showed it to you before he went in or afterwards?      A. Afterwards.

Q. When did he show you the check?

A. Oh, I guess when he came back. You know when you get whatever it is, a statement from the bank?

(Testimony of Melanie Douillard Woodd)

Q. Why did he show it to you, do you know?

A. Why?

Q. Yes.

A. He told me how much he paid out to Dr. Hovey and he put some money in something else, in some kind of a business or something.

Q. Are you to pay him back the \$500?

A. No, sir.

Q. When he came back and told you that he bought the property from Dr. Hovey do you recall what he said?

A. That day he didn't say anything because I had company. I had a lady staying with me. He gets home about half past two. She and I went to Long Beach and different places. She was having a vacation with me which I didn't [19] get to talk with him for maybe several days. He leaves at five o'clock in the morning and I never talk to him in the morning. I know better than to do that. He comes home at half past two. Like today, I am not at home. I might not see him all day today and all night tonight.

Q. Was it the next day he told you that he had bought the property from Dr. Hovey?

A. It might have been.

Q. What else did he say about the deal then?

A. Not much.

Q. He then said he bought the property?

A. Yes. He never told me what their talk was or anything ever.

Q. But he told you how much he paid?

A. Yes, he told me he gave \$500 for it.



(Testimony of Melanie Douillard Woodd)

Q. Then next when did he have a discussion with you about the property?

A. He made a deed to me because he was afraid he might have to go to war or he might die and I would have the home.

Q. When was that?

A. That was just a couple of days after that when he gave me the deed, and we did not talk any more about it because there was nothing more to say.

Q. Did he hand it to you?

A. He handed it to me. [20]

Q. Did you send it to the recorder?

A. I brought it to the recorder, sir. No, before I brought it to the recorder I took it to my lawyer and had him look at it, this gentleman right here, Mr. Stewart. I brought it to him. He said it was all right, for me to go ahead. He wanted to see if it was made right or looked right.

Q. Then it was recorded?

A. Then it was recorded and it hasn't come back yet.

Q. When did you take the tree out?

A. The big tree?

Q. Yes.

A. Well, that is right at the time Louis Douillard was there. He was the owner from September 11 until what? I don't know when I put my deed through. I have forgotten. It looks like he owned it a month or something like that. I really was going to leave it alone and live there until I died and not bother, but the boy's son shot a woman—I have had so much trouble. His son, eleven years old, put a mask on and shot at a woman. They brought him into the Sheriff's Office. That is why

(Testimony of Melanie Douillard Woodd)

I ran to the lawyer. I said, "This is what they have done, and he won't have anything and I won't have anything." So I put it through. Otherwise, I don't think I would have ever bothered.

Q. In other words, you would not have recorded the deed? [21]

A. No, as long as he lived I would have lived there and let him have it.

Q. The son must have shot the woman the day before you recorded the deed?

A. Yes, or a few days before that. The boy said, "Well, a telegram has come for me to go to court." You see, he is the father, but not the legal father, and they have let this little boy run wild.

Q. How old is he?

A. Eleven years old.

Q. You thought that might cause some complications?

A. Sure.

Q. Then you decided—

A. To put it through.

Q. —to take the deed and record it? A. Yes

Q. But you had it approved as to form?

A. That is right.

Q. To make sure it was proper?

A. That is right. And that was the day for me to take my real estate license and I failed on that because the whole thing was too much.

Q. How many days were you holding the deed, do you recall that?

A. Well, I held it from September 13, or whenever he gave it to me in there until—I don't know when I put it [22] through. I don't know.

(Testimony of Melanie Douillard Woodd)

The Referee: Any other questions, Mr. Bowden?

Mr. Bowden: Yes, Your Honor, if you are through.

The Witness: I will tell you, Your Honor. I think this is spite. Those people don't want any money. They are very wealthy, every one of them, because I haven't paid Mr. Clements. That is what I think. They laughed about it. And when there was real difficulty they turned away from Mr. Clements and got another lawyer. But I never did. I stayed with my lawyer and let them take my money.

By the Referee:

Q. Prior to the time when your son bought the property— A. My nephew Your Honor.

Q. Or your nephew, rather,—you were collecting the rent from the lady in the back, weren't you?

A. Yes. And half of the house is rented, you know.

Q. To whom?

A. To Mr. and Mrs. Ferris.

Q. How much does she pay?

A. \$25. And I have always collected the rents there and took them down to Dr. Hovey.

Q. I recall when we had that at the former hearing.

A. And he would give me a check to take to the bank because he has only one leg, you know.

Q. How long have you been doing that? [23]

A. Right along on the Virginia.

Q. This nephew was in the war, was he?

A. Yes, sir.

Q. When did he come back?

A. He has been back about a year. He is very deaf. When he came back there was blood running out of his



(Testimony of Melanie Douillard Woodd)

ears. We had a terrible time with him at first. He is better now.

Q. How long has he been staying with you?

A. Just about a year.

Q. How long has he been working out at the studio?

A. About a year. They took him right off.

Q. What does he do out there?

A. He is sort of a maintenance man and officer or something.

Q. Does he make a couple of hundred dollars a month?

A. I don't know, sir. He never told me. I don't get too personal with him.

Q. Each month you would take down to Dr. Hovey the \$20 rent from the rear and the \$25 for the other half of the house?

A. That is right.

Q. You would take that down?

A. That is right.

Q. And give it to him?

A. Yes. And then he would give me a check to take to [24] the bank the same day I would take them down and go and make the payment.

Q. Does the son of the nephew live with you, also?

A. Oh, no.

Q. Where does he live?

A. In Rosemead. I have never seen the little boy.

Q. You have your own room, that is, your own residence there for taking care of the property for Dr. Hovey?

A. Yes.

Q. Your nephew did not pay any rent?

A. No.

The Referee: Any other questions?

(Testimony of Melanie Douillard Woodd)

By Mr. Bowden:

Q. Mrs. Woodd, this check that Dr. Hovey would give you to pay to the bank, that was to pay the installment on the \$2800 trust deed, is that right?

A. That is right.

Q. That has been paid right along?

A. Yes.

Q. Ever since you first put that on there?

A. That is right.

Q. After they took the property under execution you continued to pay it that way by collecting the rent and giving it to Dr. Hovey?

A. Yes, I acted sort of like an agent. Yes.

Q. Do you know W. W. Robertson? [25]

A. No, sir.

Q. Did you ever hear of him? A. No.

Q. Do you know Mr. Alfred Price McNair?

A. No, sir.

Q. Did you ever hear of him? A. No.

By the Referee:

Q. Why do you suppose Dr. Hovey wanted \$500 for the deed?

A. I don't know, Your Honor.

Q. Do you know how much Mr. Knapp got out of the other property? They took over both of these properties under the Sheriff's deed, didn't they?

A. Yes.

Q. And then they sold one to this real estate agent?

A. Yes.

(Testimony of Melanie Douillard Woodd)

Q. Do you know how much they got out of that one to apply on the business?

A. I don't know, sir. Wouldn't the escrow show that?

Q. I think it would, but I thought Mr. Knapp would probably have told you.

A. Oh, no. I haven't seen Mr. Knapp for a good many months.

Q. How many, would you say?

A. Well,—[26]

Q. Would it be a year?

A. Oh no, I wouldn't say a year.

Q. What does a good many months mean?

A. Three months or so.

Q. Well, that isn't a good many. That is a few.

A. Well, let's see. I don't know when I saw him last.

Q. You saw Mr. Knapp about two days before your nephew went into Dr. Hovey to buy the property, didn't you?

A. Oh, no.

Q. Didn't you?

A. Oh, no. Mr. Knapp told me about going to sell Glendale when we were in court here.

Q. Do you remember you said you went in because of the tree and Mr. Knapp seemed to be angry and he said he was going to sell the property?

A. Oh, yes.

Q. And you told your nephew and he went back to see Dr. Hovey right away?

A. I was sitting in the outer office talking to Mr. Knapp when this happened.



(Testimony of Melanie Douillard Woodd)

Q. How did you know Mr. Knapp wanted to sell the property?

A. He just said, "I am going to sell." That is all he said. And he walked back into his room.

Q. Why didn't you ask him how much he wanted to sell [27] it for?

A. You can't talk to Mr. Knapp when he is bitter and angry.

Q. Then you had an idea the property could be bought so you told your nephew to go in to see Dr. Hovey?

A. No, I didn't have an idea it could be bought. I just talked about what he said he was going to do and the boy evidently just took it upon himself, as long as it was going to be sold, I guess anybody could have done it.

Q. I was wondering why he didn't go in to see Mr. Knapp because Mr. Knapp was the real owner?

A. I don't know.

Q. Dr. Hovey wouldn't do anything without Mr. Knapp's consent because he really held the property for Mr. Knapp, didn't he?      A. He did.

Q. So I don't believe he would sell Mr. Knapp's property without asking Mr. Knapp if it was all right. It doesn't sound logical.

A. You will have to ask Dr. Hovey about that.

Q. Yes.

A. You will have to ask him about that. The deed was in the name of Dr. Hovey.

Q. Yes, I know it was.

A. So how could it be Mr. Knapp's property?

(Testimony of Melanie Douillard Woodd)

Q. A few minutes ago we said Dr. Hovey was holding [28] it for Mr. Knapp, so why wouldn't he get in touch with Mr. Knapp if he was going to sell it?

A. Maybe he did.

Q. Why do you suppose he sold it for only \$500?

A. I don't know that, sir. I wouldn't know.

Q. Do you think Mr. Knapp told him or advised him to sell for that, or do you know anything about it?

A. I don't know, Your Honor. I don't know.

Q. What is your opinion of the value of the property? A. I don't know.

Q. Is it worth \$10,000? A. I don't know.

The Referee: Any other questions?

By Mr. Bowden:

Q. Mrs. Woodd, you remember talking to Mr. Perkins, a real estate man, out at your home last November?

A. This last November?

Q. Yes.

A. I don't know. Real estate men have been coming up around there asking if the place was for sale and things like that.

Q. Do you remember Mr. Perkins coming and asking if it was for sale and if you owned it and you said you did own it for a long time, that you got it from your mother and you wanted \$30,000 for it?

A. No. [29]

Q. You don't remember that conversation?

A. No, I don't remember that.

Q. Did you have a conversation like that with any real estate man in November?

A. No, I don't think so.

(Testimony of Melanie Douillard Woodd)

Q. Did you ever tell anybody it was worth \$30,000?

A. No.

Q. What is it worth?

A. I don't know what it is worth, sir. I would have to have it appraised. Real estate people come up to the door almost every day.

Q. How long has the \$2800 loan been on the property? What was the date of it, do you remember?

A. I don't know.

Q. Well, you borrowed the money on it, didn't you?

A. What?

Q. You borrowed the money on it, the original \$2800, didn't you?

A. Wasn't it more than that years ago? I don't know.

Q. I don't know. I am asking you, Mrs. Woodd. When did you make that loan first? Can you tell us that, approximately, regardless of how much it was?

A. Let's see, now. I bought it for \$5000 and I paid two or three thousand dollars in installments somehow. Then when Dr. Hovey took it over I think he bought it for—at the Sheriff's sale, for \$1775, or something like that. [30]

Q. No, Mrs. Woodd, what I am asking is this—

A. I am trying to get to where this mortgage is. There is another mortgage that I had nothing to do with.



(Testimony of Melanie Douillard Woodd)

Q. You did not? A. Evidently not.

Q. Who put that on?

A. I think Dr. Hovey on the stand said he put on another mortgage.

Q. What was the amount of the mortgage when Dr. Hovey took over?

A. \$1775, I think.

Q. That is where you had paid down to that?

A. Yes.

Q. That original mortgage was how much then, about \$5000? A. No, about \$2000.

Q. Originally, it was about \$2000?

A. First it was \$4000 and then it was amortized.

Q. That is what I am after. A. Yes.

Q. Originally it was \$4000? A. That is right.

Q. Then you paid it down to \$1750 and Dr. Hovey put another mortgage on for \$2800, is that correct?

A. That is correct.

Q. And that \$1750 was paid at that time when Dr. Hovey [31] put the \$2800 mortgage on it? In other words, there are not two mortgages on it now, are there?

A. There is only one mortgage on it now, but how it was done I don't know.

Q. You are paying that now, are you?

A. I am paying that, yes, sir. He bought that—  
oh—

(Testimony of Melanie Douillard Woodd)

Q. You have had no conversation of any kind or character with Mr. Knapp about this transaction?

A. This one here?

Q. Yes.           A. No.

Q. Where you got the deed from your nephew?

A. Not at all. You just bring him in here and he will be very much surprised. He hasn't seen me and doesn't know a thing about it, absolutely.

Q. Is your nephew coming to court Monday morning?  
A. Yes.

Q. He will be here?           A. He will, sir.

Mr. Bowden: That is all.

The Referee: Should Mrs. Woodd return at that time?

Mr. Bowden: I think so, if she can.

The Referee: Is her presence required, that is the thing? Do you mind coming back on Monday?

The Witness: If you want me. [32]

The Referee: When your nephew is here.

The Witness: I will if you want me to.

The Referee: I am not sure that your presence is necessary. It seems to me with your nephew here it might be a good idea for you to be here also and clear up these matters.

The Witness: I will do that.

Mr. Bowden: If the Court please, may the witness be notified that the restraining order is still in force and effect, restraining her, the restraining order that was served on her?

The Referee: Whatever the situation is in connection with the restraining order it is to remain in effect until this is dismissed or until we go further into this matter or at least until the continued hearing.

The Witness: Thank you.

The Referee: The property is in your name.

The Witness: My name.

The Referee: And you intend to keep it in your name?

The Witness: I would like to.

The Referee: Well, you do not intend to transfer it to anybody else?      The Witness: No sir.

The Referee: Or give it away?

The Witness: No, sir.

The Referee: Well, that is the effect of the order: It [33] remains as it is.

(Which was all the evidence offered and received at the time aforesaid.)

[Endorsed]: Filed Feb. 14, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jun. 18, 1947. Edmund L. Smith, Clerk. [34]



[Title of District Court and Cause]

Before Honorable Hubert F. Laugharn  
Referee in Bankruptcy

REPORTER'S TRANSCRIPT OF HEARINGS  
HELD IN THE ABOVE-ENTITLED CASE ON  
MARCH 28, APRIL 5, DECEMBER 12, DECEMBER  
16, AND DECEMBER 23, 1946; AND  
JANUARY 20 AND 23, 1947.

Appearances:

Leslie S. Bowden, Esq., 505 Fidelity Building, MI-1371,  
Los Angeles, California, Attorney for the Receiver,  
George T. Goggin.

Clements & Austin, 306 L. A. Stock Exch. Bldg., MA-  
2565, Los Angeles, California, Attorney for the Douil-  
lards, Creditors.

Daniel A. Knapp, Esq., 424 Black Building, MU-5922,  
Los Angeles, California, Attorney for Edna D. Heath,  
Administratrix of the Estate of Fred W. Heath.

Earl F. Crandell, Esq., 304 South Broadway, VA-3445,  
Los Angeles, California, and

Stewart & Stewart, by Arthur T. Stewart, Esq., VA-  
1613, 304 South Broadway, Los Angeles, California, At-  
torneys for the Bankrupt.

E. S. Rhode, Esq., 178 North Mariposa Avenue, FE-  
7603, Los Angeles, California, Attorney for A. P.  
Garnier. [1]

Melanie Douillard Woodd                      March 28, 1946.

The Referee: Melanie Douillard Woodd.

Mr. Bowden: Ready. Mrs. Woodd, will you take the  
stand, please?

MELANIE DOUILLARD WOODD,

having been first duly sworn, on oath testified as follows:

Direct Examination

By Mr. Bowden:

Q. You are the bankrupt in this proceeding?

A. Yes, sir.

Q. Now, Mrs. Woodd, did you inherit something or some property from your mother's estate?

A. Yes, sir.

Q. How long ago was that?

A. 1938, or rather 1937; the estate was settled in 1938.

Q. The estate was settled the 27th of September, 1938?

A. Yes, sir.

Q. How much did you receive from that estate?

A. I received one-fourth of all of her property.

Q. Do you know what the value was?

A. Yes, sir, I think my share came to \$10,000 and something. [2]

Q. Was that in money or property?

A. That was in property.

Q. How much administratrix's fees did you receive from that estate?

A. It says here \$880.

Q. What are you reading from?

A. I have a memorandum here.

Q. Where did you get it?

A. Mr. Knapp helped me with it.

Q. Was it prepared for the purpose of this hearing?

A. Yes, sir.

Q. Have you any independent recollection of these matters?

A. Some of them I have but not all.

(Testimony of Melanie Douillard Woodd)

The Referee: That would be quite simple, the answer is as to the administratrix fee. Is there any question about it? If her counsel prepared it I think we could depend upon it unless there is some controversy and then we will check it with the original.

Mr. Browden: Q. The administratrix fees were \$1,569, were they not? A. I don't remember.

Q. If that is what the file shows would that be correct? A. That would be correct.

The Referee: Let's settle that. You have a note here [3] that your fees were \$800?

A. Yes, sir. I said to Mr. Knapp \$1,500 and I think that he presumed that was \$800 for me and \$800 for Mr. Heath.

Q. You read the item you refer to. What does it say?

A. It says \$880, executrix commission.

Mr. Bowden: I have the file here.

The Witness: You see that is on \$70,000. Do you know how to account for that?

Mr. Bowden: Q. Is Mr. Knapp's associate here?

A. No, he is dead. Mr. Knapp is here.

Mr. Knapp: Your Honor, I was one of the attorneys in the estate matter and I was subpoenaed here this afternoon.

The Referee: Q. What were these fees?

A. I thought they were \$1,500 on all of it, but Mr. Knapp thought I must be wrong.

The Referee: Well, the file usually shows.

Mr. Bowden: The file is here. I have it. It is \$1,569.

The Referee: We will take that amount as correct as having been received. It may be corrected if there is any reason.



(Testimony of Melanie Douillard Woodd)

Mr. Bowden: Q. Now, Mrs. Woodd, didn't you receive from your mother's property and estate money and property of the value of \$23,691.49? [4]

A. I received my share, it is down on the books, ten thousand and something, and then I received a legacy of \$10,000; then I had to pay—

The Referee: Let's go back on this. How extensive is the decree of distribution?

Mr. Bowden: The decree of distribution is something—I don't know whether anyone understands it correctly or not and furthermore, after the decree of distribution was made, apparently the heirs got together and divided it back and forth among themselves. My questions are leading to the total value of everything she received from her mother's estate.

The Referee: Do you mean from the estate under the court order or some subsequent adjustment?

Mr. Bowden: I don't know.

The Referee: Why don't you show what the court order shows?

Mr. Bowden: The court order shows she will get one-fourth of the estate but that does not fix the value of the estate, plus \$10,000. My starting point is what was the value of the money and the property she received from her mother's estate, whether it was by decree of the court or by mutual conveyances from any of the heirs, what she did receive.

The Referee: Then we will have to go back and see what she did receive. [5]

Mr. Bowden: I have here an order fixing her inheritance tax, the entry is \$23,691.49. She has just testified she received one-fourth of the estate and \$10,000. I want to ask her if this figure is not correct.

No. 11904

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

---

EDNA D. HEATH, Executrix of the Last Will of  
FRED W. HEATH, Deceased, and MYRA C.  
KNAPP, Executrix of the Last Will of DANIEL  
A. KNAPP, Deceased,

Appellants.

vs.

JOHN N. HELMICK, Trustee of the Estate of ME-  
LANIE DOUILLARD WOODD, Bankrupt,

Appellee.

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## TRANSCRIPT OF RECORD

(In Two Volumes)

VOLUME II

(Pages 257 to 535, Inclusive)

Upon Appeal From the District Court of the United States  
for the Southern District of California

Central Division

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**FILED**

JUL 16 1948

PAUL P. O'BRIEN,  
CLERK





**No. 11904**

IN THE

**United States Circuit Court of Appeals**

**FOR THE NINTH CIRCUIT**

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EDNA D. HEATH, Executrix of the Last Will of  
FRED W. HEATH, Deceased, and MYRA C.  
KNAPP, Executrix of the Last Will of DANIEL  
A. KNAPP, Deceased,

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for the Southern District of California  
Central Division

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(Testimony of Melanie Douillard Woodd)

The Referee: Go ahead.

Mr. Bowden: Q. Is that the correct value of the property here, the money you inherited from your mother's estate, \$23,649.41?

A. No, my one-fourth would be \$10,000 and something. I received no properties or anything, but before they divided that that was my share, just like the others. They had the same amount.

Q. Now, isn't it a fact that in addition to what you received from your mother's estate you received a piece of property that was held by you and your mother in her lifetime?

A. That is correct, but that didn't belong to the estate at all. Mr. Heath got that.

Q. Let me ask you if the value of the property you received from your mother's estate in property and cash, plus the joint tenancy, is not \$23,691.49?

A. Well, that is different.

The Referee: Yes, I want to get straightened out on this point. I think you should have the decree. That is not part of her probate estate.

Mr. Bowden: It is part of her inheritance. Was it [6] appraised?

A. It had no business being in there. All I needed to do was to record the deed for \$1.

The Referee: Are you offering this in evidence?

Mr. Bowden: No. All we can do is to offer it by reference.



(Testimony of Melanie Douillard Woodd)

The Referee: Do you have a copy?

A. No, we do not.

The Referee: Do you want to read it into the record or is that necessary? In other words, what you want as a starting point is the property she inherited by reason of the death of her mother; a portion of which she took from the estate and a portion as surviving joint tenant?

Mr. Bowden: That's right.

The Referee: Well, apparently according to the affidavit for tax purposes it was received at the time as \$23,691.49, of which \$10,000 was a specific bequest and then there was a joint tenancy property also, is that correct?

Mr. Bowden: Yes. I will read a portion of the decree of disbursement. A decree of disbursement in the Superior Court, Case No. 170,205, dated September 27, 1938, in Department 25 of the Superior Court, in and for the County of Los Angeles, among other things refers to the following: To Melanie Douillard Woodd, daughter, all jewelry, personal effects, and household goods, and the sum of \$10,000 in [7] cash. To Melanie Douillard Woodd, one-fourth of the rest, residue and remainder of said estate. That is substantially correct, is it not?

Mr. Knapp: Yes, I believe so.

The Referee: Now, what was the jewelry involved there? What were the personal effects and the household furniture involved at? We will add those to the \$10,000 and take one-fourth of that and that would be the apparent result as far as the estate is concerned.

(Whereupon a short recess is had.)

MELANIE DOUILLARD WOODD,

resumed the stand and testified further as follows:

The Referee: On this matter, Mr. Bowden, would it be possible to have the bankrupt supply the schedule or inventory of the property which she took of the estate, together with the estate appraisal thereon?

Mr. Bowden: I don't know whether she can supply that information or not. It is here in the file.

The Referee: The file is not in evidence.

Mr. Bowden: No. but I thought we could read portions of the inventory and divided it by one-fourth.

The Referee: Maybe that is the answer to it. I don't know how laborious that will be.

Mr. Bowden: The inheritance tax certificate, I think, fixing the tax is probably the best evidence as to the value of everything she got from the estate. [8]

The Referee: Yes, that might present a different value than the appraisal in the estate, I don't know whether they are different or not.

Mr. Bowden: It is the same appraisal and apparently from looking through the file there was no re-appraisal. I imagine their total tax is calculated on the value of the estate. That shows that she received from this estate property in the value of \$23,691.49, and since we took the recess I found out that joint tenancy property was not included in that. There was a different proceeding and the appraisement of her interest was made in that proceeding. So we can take that figure as \$23,691.49.

Q. Now, Mrs. Woodd, what property did you receive from your joint tenancy interest with your mother?

A. 1160 North Hobart.

Q. Do you know the value of that property?

A. It was \$4,200.

(Testimony of Melanie Douillard Woodd)

Q. The total value?

A. Mother paid \$4,200 for it and there was a \$2,400 mortgage.

Q. Now, what was the value of it again?

A. I say she paid \$4,200 for it.

Q. When did she buy it? A. In June, 1937.

Q. You think it was worth about the same when you inherited it? [9] A. I don't think it was.

Q. Who owns that Hobart property now?

A. Mrs. Yarborough.

Q. Did you sell it to her? A. Yes.

Q. When did you sell it?

A. In October or November of 1938.

Q. How much did you get for it?

A. I got—I cannot tell you, either eight or nine hundred dollars for the equity.

Q. What became of the property and money that you inherited from your mother's estate which was valued by the inheritance tax appraiser at \$23,691.49?

A. That takes in that little cottage again and my share, my one-fourth of the \$10,000 and something—\$4764 out of the \$10,000 bequest. I had no money when my mother died.

Q. Well, you got property of the value of \$23,691.49, and according to the records that is the total value of everything you received from your mother's estate. Now, you tell us in your own words what became of that property.

A. I sold the 1824 South Vermont, that was valued at \$15,600.

Q. 1824 South Vermont was appraised at \$15,600?

A. Yes, sir.



(Testimony of Melanie Douillard Woodd)

Q. What became of it? [10]

A. I sold it for \$7,500.

Q. Who did you sell it to?

A. Mr. Vissalough, an attorney.

Q. Who is he? A. I don't know.

Q. For how much? A. \$7,500.

Q. Is that the amount of money you received for it?

A. No. After the escrow and everything was taken out I received \$6,400 in cash.

Q. All right. Tell us about the other properties.

A. Well, there is no other property. I bought 1732 South Vermont—

Mr. Bowden: Just a moment. You have now told us what happened to the property of the value of \$15,600 that you received. That would leave, according to my figures, property of the value of \$12,291.49, what became of that?

The Referee: Where do you get that difference?

Mr. Bowden: If you take the total appraisal for inheritance tax purposes, the sum of \$23,691.49, plus the value of the property she received from her joint tenancy, which she said cost \$4,200.

Mr. Crandall: There is a \$2400 note against it.

The Referee: You are not going to have a satisfactory record this way. What did you inherit from the estate, if that is important here in your issue. I don't know just what [11] your point is, but let's have the identity of the articles.

Mr. Knapp: May I speak as *amicus curiae*?

The Referee: Yes.

Mr. Knapp: I have a copy of the report of the inheritance tax appraiser, he took his figures from the

(Testimony of Melanie Douillard Woodd)

original files of the case. I mean from the amount that was set forth in the inventory, but the members of the family, the two Douillards, the nephew and the niece and Mrs. Woodd, made an agreement that they would disregard this entire inventory and that they would divide it into fourths, and accordingly Mrs. Woodd received one piece of property valued at \$15,600 and that was all she got. Then there was the sum of money that she was to pay into the fund so as to equal the \$4,764.66. I have a copy of the inheritance tax appraiser's record before me, it was based upon the inventory and nothing else, and in that, in order to figure out the \$23,691, it states as follows: That the cash bequest was \$10,000, furniture and jewelry \$519, residue \$11,922, joint tenancy \$1,250, but not one word is stated there about the Vermont property of \$15,000, because this was based entirely upon the inventory. If counsel desires I would be pleased to let the Court have it for guidance.

The Referee: Yes. Now, Mr. Bowden, aren't we concerned here with what she actually received from the estate? [12]

Mr. Bowden: From the estate and her joint tenancy.

The Referee: Now, if they had a separate deal, wouldn't you take the report of the inheritance tax appraiser? That is why I don't believe you will be satisfied until we go back to the simple question: What, as a result of the settlement with the heirs, did she receive from this estate? We will treat the joint property separately. Now, there was so much in jewelry and residue and other amounts. It seems to me we could start at the first and cover that. Let me just take a moment and see if I can bring out what I have in mind.

(Testimony of Melanie Douillard Woodd)

The Referee: Q. In your settlement with the heirs you still kept the jewelry which you were to inherit, did you not?

A. No, sir. I gave it all to my sisters-in-law and my brothers. Also the furniture.

Q. Even though the will gave you so much money in this specific bequest, for some reason you made an adjustment with your relatives?

A. Yes, sir, I just gave it to them.

Q. Was that after or before the property was distributed in court? A. Afterwards.

Q. How long afterwards?

A. No, it was done before. I should not have done it but I did it before. [13]

Q. Then the decree of the court does not express what entirely happened, does it?

A. No. I paid all of the taxes or whatever it was on those things.

Q. Under the will you were to receive \$10,000 plus the jewelry, plus the personal effects, plus the furniture, and plus one-fourth of the estate.

A. That is right.

Q. And the decree of distribution is made in accordance with the consent of the heirs or in accordance with the will, which? A. In accordance with the heirs.

Q. You then gave away the jewelry?

A. I gave that up of my own free will. But the agreement on the other properties, and that all was done in Mr. Heath's office, and they took all of the money and property and said they would sell me the big building.

Q. Now, we have the background. Let's see just what you got then. First, the fee has been expressed as \$1,569, and we will take that as being the amount, unless you



(Testimony of Melanie Douillard Woodd)

want to show otherwise later in the hearing. What then did you receive other than this Vermont property in the settlement?      A. Nothing.

Q. What is the address of that property?

A. 1824 South Vermont, it is a business building. [14]

Q. So as a result of your adjustment with the heirs you took in lieu of what you were entitled to, you took this property at 1824 South Vermont.

A. Yes, sir.

Q. Did you get your administratrix's fees in addition?      A. Yes, sir.

Q. Now, the property at 1824 South Vermont was appraised in the estate at \$15,600?      A. Yes, sir.

Q. But you sold it, after you acquired it, to an attorney, Mr. Vissalough, for \$7,500?      A. Yes, sir.

Q. And you received \$6,400 in cash?

A. Yes, sir.

Q. And when did you sell it and when did you receive the cash?

A. I sold it in—I think August, 1939.

Q. Did you receive the cash at that time?

A. Yes, sir.

Q. Why did you only receive \$6,400 cash if it sold for \$7,500?

A. Well, there was assessments on it and escrow and realtor fees.

Q. I see. Now, what did you do then, with that \$6,400; did that go into a bank account some place? [15]

A. Yes, sir, I put \$5,000 of it, at first, in the Western—the Federal Western Housing or something.

Q. You deposited it in there?

A. Yes, sir, and I think I kept \$1,500.

(Testimony of Melanie Douillard Woodd)

Q. Did you put that balance in the bank or keep it in cash?

A. I think I kept in cash but I may have put it in the bank.

Q. Then in addition you had the property you had received as the surviving joint tenant? A. Yes, sir.

Q. Which you sold to Mrs. Yarborough in 1938?

A. Yes, sir.

Q. And you got how much for it?

A. I cannot recall whether it was eight or nine hundred dollars, but right in there.

Q. That was for your equity? A. Yes, sir.

Q. Apparently there was \$2,400 due on it?

A. Yes, sir.

Q. How and when did she pay you the eight or nine hundred dollars for your equity?

A. She made a deposit of \$300, I think, and the realtor fee came out of that, I think I got \$150 down and \$10 a month finally until it was paid for.

Q. And it has been paid for? [16]

A. No, sir, it is in litigation. I have no more to do with it.

Q. It was payable to you, wasn't it?

A. Yes, sir.

Q. By contract or trust deed?

A. Trust deed, I think.

Q. How did you dispose of that contract payable to you?

A. I made a payment on my—on Dr. Hovey's judgment.

Q. By assigning it? A. Yes, sir.

(Testimony of Melanie Douillard Woodd)

Q. That takes care then of the joint tenancy property. All right. I have the picture now.

Do we have now to go back and talk about the \$23,691.49?

Mr. Bowden: I don't think so, but I believe the witness is mistaken when she says the decree of distribution was made in accordance with the agreement with the heirs; the record shows the distribution was made in accordance with the will.

Mr. Crandall: I think that is correct. I think the heirs disregarded the decree.

The Referee: Are any of the heirs parties to this proceeding here?

Mr. Bowden: No, sir. [17]

The Referee: Well, if you want to make any explanation it may be done in the course of the hearing.

Mr. Bowden: Q. Mrs. Woodd, when you say you had this this agreement with the heirs, did you get your \$10,000 in cash from this estate outside of this agreement with the heirs?

A. I got my \$10,000—I don't know how to say that. It never got into my hands. Mr. Heath had \$10,000 in the bank, because I was bonded for \$30,000 as executrix; then \$4,764.66 was taken out of that \$10,000 and then also the inheritance tax that I had to pay on that \$10,000.

The Referee: Well, this is getting over my head. I assume from my question that she never got that \$10,000 or any part of it. Now, if there was some other situation, let's have that brought out and perhaps Mr. Bowden can bring it out better.

Mr. Bowden: Q. Mrs. Woodd, let's go at it in this way: The decree of the court was made in accordance



(Testimony of Melanie Douillard Woodd)

with the will and then you and the heirs of the estate decided to do something else.      A. That is right.

Q. What was the agreement between you and the heirs?

A. That they should take all of the money and all of the properties except this one building and they were to give me my fourth in that building, and I was to pay the \$4,764.66 to equalize my share; that is the way Mr. Heath [18] said it. He got this building and I had to pay that.

Q. What was your share under this agreement with the heirs?

A. \$10,000; whatever the law said was my share.

Q. You don't understand my question. You had an agreement with the heirs that each of you were to get a certain amount of money; what portion did you get under that agreement?

A. I got this building; \$10,000 in the building.

The Referee: What was the reason for the settlement? You had a certain vested condition, why did you have to make any further adjustment?

A. They took all of the buildings, all of the good buildings.

The Referee: Q. Why did you have to take that? You were to get one-fourth and certain things, why did you change that?

A. Because they wanted me to. They said I had \$10,000 and I could buy that building and none of the others could.

Mr. Knapp: Mrs. Donahue didn't want any of the property sold: she wanted it to remain intact and be divided, and the effort of the heirs was to divide the property that way. Now, there was \$10,000, which she is not

(Testimony of Melanie Douillard Woodd)

separating from the other. That must be separated first, then after that there is the big building on South Vermont; then there [19] was the equalizing fund that had to go back in order to make it an equal matter all of the way around for the heirs, of \$4,754.66; and that is what she has reference to there.

The Referee: That is when they decided to settle the matter?

Mr. Knapp: Yes, They decided to settle the matter in accordance with the mother's wishes.

The Referee: Then she normally would receive only the one-fourth of the Vermont property; but she decided or they prevailed upon her to take it over, less the \$4,754, so she then made the adjustment, so she came out of the deal with the title to the Vermont property and nothing else?

Mr. Knapp: Well, the \$10,000 less the \$4,000; \$5,200 and some odd dollars.

The Witness: Yes, that is right.

The Referee: So as a result of the settlement you got \$5,200 and some odd dollars plus the Vermont property?

A. Yes, sir.

The Referee: Well, we have traced the Vermont property and we have traced the joint tenancy property and now for the first time you are mentioning to me something about \$5,200. A. Yes, sir.

The Referee: What bank was that in? [20]

A. The Citizens National Bank, I think.

The Referee: Q. So at that time if you didn't have any other estate you had the Yarborough contract, you had \$5,200, and you had the \$6,400?

A. That is right.

(Testimony of Melanie Douillard Woodd)

Q. That is what you had at that time?

A. Yes, sir.

Mr. Knapp: Again, your Honor, as *amicus curiae*—the Yarborough contract was for exactly \$800. But that does not include, however, the amount that she received prior to that time, about \$150 net.

The Referee: That I believe gives us the picture. You made a bad deal on the Vermont property.

The Witness: Yes, indeed I did. I see it now.

The Referee: Q. Of course, if you still had it, it would be all right. A. Yes, sir.

Mr. Bowden: Q. Now, what became then of the money you had? I think according to Mr. Knapp's statement you would have \$5,235.34 of the \$10,000, is that correct? A. Yes, sir.

Q. Plus your administratrix fee you would have had a total of \$6,437?

A. Well, on the executrix fee, I ate that up each month. I fed my brother's children and I took a few trips. That is what I did with that. [21]

Q. Now, you got five thousand and some odd dollars from the estate?

A. With that I built a house for George Douillard, for \$1,500, and I found he had not paid for the lot so I had to pay \$500 cash for the lot, and I took a trust deed back on that.

Q. For how much?

A. For the whole amount.

Q. \$2,000?

A. Yes, sir, or whatever it was. He was paying me \$10 a month as long as he lived or until he paid it out but he was so nasty with the bank that I sold it to Dr. Heirs for \$800.



(Testimony of Melanie Douillard Woodd)

Q. You sold it to Dr. Heirs?

A. Yes, sir, of Beverly Hills.

Q. Did he keep it?

A. I don't know, I don't even know him.

Q. You have not had anything to do with him since?

A. No, sir. I did all of this through a real estate agent. Now where are we? Oh, yes, I built this house. Then I paid the inheritance tax on the \$10,000, my own; that was \$375, and I bought the Virginia Avenue property for \$5,000 and I paid a deposit a thousand dollars on it, and a few months later I paid another thousand.

Q. Was that part of the estate?

A. No, sir. This is new land I bought. [22]

Q. You paid \$5,000 for it?

A. The price was \$5,000 but I made a deposit of a thousand dollars and two months later another thousand and I put a thousand on furnishings for that house and I remodeled the Virginia property. I made a duplex out of it, and that cost a thousand dollars, cement porches and the plumbing, and there was one garage on the Virginia property and I had to build three and I built a little cottage on the back end of the Virginia Avenue property that cost me \$2,000, and I had to build three garages, I moved one and built two more, cement, and I had asbestos in there for safety in case of fire and so forth, and that cost \$400.

Q. Did you say you paid \$5,000 for the Virginia Avenue property?

A. That was the price of it.

Q. Where are you getting that figure?

A. From my mind.

(Testimony of Melanie Douillard Woodd)

Q. It says there the purchase price was \$3,000.

A. That is wrong. The price was \$5,000. I paid \$3,000 on it. That is not right.

Q. Aren't those notes correct that you are using to testify from?

A. They should be but they are not.

The Referee: Q. From whom did you buy the property? A. The Pacific Mutual; Mr. Thirtle.

Q. In what year? [23] A. 1939.

Q. You bought it for \$5,000?

A. That was the purchase price.

Q. It was not \$3,000? A. No, sir.

Q. And you paid a thousand dollars down and later paid another thousand? A. Yes, sir.

Q. That would pay it down to \$3,000?

A. Yes, and I think I paid another thousand on it.

Q. Then you remodeled for a thousand dollars and built the garage for about \$2,000 and put the two garages on for \$4,000? A. Yes.

Q. And you think you paid another thousand dollars on it some place?

A. Yes, sir. The furniture for the Virginia property house cost a thousand dollars; that was an Electrolux, a stove, and everything. Then I bought the Glendale property.

Q. Well, let's follow the Virginia Avenue property. What happened to it?

A. Dr. Hovey got that in the judgment

Q. When was that?

A. Well, I could not pay my attorney and they filed through him.

Q. They sued and executed? [24] A. Yes, sir.

(Testimony of Melanie Douillard Woodd)

Q. When was that approximately?

A. Mr. Knapp would know that.

The Referee: Q. Well, we will pass that, What credit did he take at any time?

A. He bought it at sheriff's sale, for \$1,775, I think they said at the sheriff's office.

Q. Were you living in the property?

A. Yes, sir, I am the caretaker there.

Q. Is there another rental there?

A. There are two rentals altogether. Two besides me.

Q. How much does the cottage rent for?

A. Twenty.

Q. And how much the duplex?

A. Twenty-five.

Q. And you get yours there? A. Yes, sir.

Q. You collect the rent?

A. Yes, sir, and take it to Dr. Hovey.

Q. What credit did you get upon your attorney bill upon the execution sale of the property?

A. I guess Mr. Knapp can tell you.

Q. You had put in \$5,000 and the furniture is \$6,000, did they take the furniture?

A. No. I sold all of the furniture except the [25] little I have on my side.

Q. To whom did you sell it?

A. To different people.

Q. Why did you sell it?

A. I needed the money.

Q. It was in there and being rented, wasn't it?

A. First it was in there and those people moved out and they had dogs in there and they tore the furniture almost to pieces so I sold it to a second-hand man. That



(Testimony of Melanie Douillard Woodd)

was in the cottage. In the duplex I didn't have any furniture in there.

Q. So this property which cost you \$8,400, and you had the balance you think of two or three thousand dollars, you got how much credit on your judgment?

A. On the Virginia property?

Q. Yes. A. \$1,775.

The Referee: Q. That was all, was it?

A. I think so.

Mr. Knapp: May I explain to the court the effect of the judgment?

The Referee: Let's cover that later. What was credited on this property? What credit or consideration did she get upon the obligation?

Mr. Knapp: The credit was \$1,775.

The Referee: She is correct then. That seems to [26] bring it down to date on that.

The Referee: Q. Now, how did you lose the Yarborough trust deed and note?

A. How did I lose that?

Q. Yes, you don't have it any more, do you?

A. No. I assigned it to Dr. Hovey.

Q. Why did you assign it to Dr. Hovey?

A. As partial payment on the judgment.

Q. When did you assign it?

A. I don't remember.

Q. Was that after or before the house was sold, the Virginia Avenue property was sold?

A. It was after.

Q. How much did he give you, the full amount of the unpaid amount? A. I guess so.

Mr. Knapp: \$689.49, your Honor. I want to say this: It was first attached on April 11, 1940, and sub-

(Testimony of Melanie Douillard Woodd)

sequent to the attachment it was assigned. By the way, the particular matter is now pending in the Supreme Court, where these files are at the present time.

The Referee: Now, that disposes of that property and the Virginia Avenue property. What, if any, cash did you have remaining? I imagine that would be in 1939. Had you put it all into these properties?

A. Not in these. Then I bought the Glendale property [27] for \$3,500.

The Referee: Q. That is another one?

A. Yes, sir.

Q. You have not mentioned that yet?

A. No, sir.

Q. When did you buy the Glendale property?

A. In 1939.

Q. What is the address?

A. 1255 South Glendale Avenue.

Q. For how much?

A. \$3,500. The deposit was \$1,750 and payments of \$40 a month, I think.

Q. What happened to that?

A. Dr. Hovey had a judgment.

Q. And he attached that?

A. Yes, and bought it through sheriff's sale.

Q. How much credit did he give you on that?

A. I don't know.

Q. Was that property rented? A. Yes, sir.

Q. What has he since done with that property?

A. Mr. Knapp would know. I understand he sold it.

Q. When did he sell it?

A. This year, I think.

Q. What did he get for it?

A. I don't know. [28]

(Testimony of Melanie Douillard Woodd)

Q. Why?

A. I have nothing to do with it.

Q. You are collecting the rents for it, are you not?

A. Oh, no, no.

Q. Well, on the other property. You apparently see him every month.

A. I have not seen him for about three months now.

Q. Why?

A. I have been ill. I just called him up and asked if I should make the payments to the bank.

Q. You just have not discussed it with him and you therefore don't know?      A. That's right.

Q. He has not refused to tell you, but you have not asked him?      A. That is right.

Q. But he has resold it this year?

A. Yes, sir.

Q. How do you know?

A. Mr. Knapp told me.

Q. But he didn't tell you, Dr. Hovey?

A. No, sir.

Q. And you don't know what it was sold for?

A. No, sir.

Q. Do you know how much credit he gave you on the [29] judgment?      A. No, your Honor.

Mr. Knapp: As amicus curiae, and with the sheriff's deed before me; \$1,250.

The Referee: Q. Now, is that all of the property?

A. That is all, I think.

Q. And that is the disposition of it?

A. Yes, sir, but I spent out a lot more money than that. I bought a car for one nephew for \$600 and one for \$90.



(Testimony of Melanie Douillard Woodd)

Q. Did you make them presents of the cars?

A. Yes, sir.

Q. What is the name of the nephew you got the \$600 one for?

A. Louis Douillard.

Q. Where does he live?

A. He stays with me right now.

Q. Does he still have the car?

A. No. He sold it before he went to the war.

Q. Did he put it in another car?

A. I don't think so.

Q. You bought this \$600 automobile and gave it to him?

A. Yes, sir, to take me around.

Q. Was it in his name or yours?

A. In his. In the first instance it was in my name. [30]

Q. What kind of a car was it?

A. A second-hand Plymouth.

Q. You purchased it in your name?

A. Yes, sir.

Q. When was it transferred on the motor vehicle records to your nephew?

A. Right quickly after that. I was afraid that he might hurt someone and I didn't want to be responsible. I cannot drive.

Q. It was purchased for your use, was it?

A. Yes, sir.

Q. Do you recall what year it was assigned to him?

A. It must have been 1939.

Q. What is his full name?

A. Louis Alfred Douillard.

Q. And he is now residing with you?

A. Yes, sir.

Q. You purchased it in 1939?

A. Yes, sir.

(Testimony of Melanie Douillard Woodd)

Q. How old is he now? A. 34.

Q. And he went to the Army? A. Yes, sir.

Q. And has now returned? A. Yes, sir.

Q. And he sold the car when he went into the Army? [31] A. That is right.

Q. When was that? A. I cannot say.

Q. 1941 was Pearl Harbor—did he go in before or after Pearl Harbor?

A. After Pearl Harbor. I think in 1942.

Q. Did you know to whom he sold the car?

A. I heard him say some preacher, but I don't know his name.

Q. Do you know how much he got for it?

A. No, sir.

Q. Did he purchase another car with the money?

A. No, sir.

Q. Does he have any car now?

A. Yes, sir.

Q. What kind?

A. DeSoto, he just got it this week.

Q. A new one?

A. No, a second-hand one; he paid \$1,200 for it.

Q. Did he ever tell you how much he got for the car you gave him?

A. No, your Honor. You see he sold everything; his clothes and all, and he just came to tell me goodbye when he was leaving.

Q. Why were you afraid to have the car in your name, Mrs. Woodd, because of accidents? [32]

A. Sure; I cannot drive.

Q. You have never had a driver's license?

A. Never in my life. I cannot drive.

(Testimony of Melanie Douillard Woodd)

Q. He sold the car before or after he went into the Army?      A. Before.

Q. Was it before or after the threatened litigation which you had herein and in which counsel defended you, that you transferred the car to your nephew? Had the litigation threatened at the time you transferred the car to your nephew?

A. No; I don't think we were in litigation yet.

Q. I didn't say in litigation, I said threatened.

A. He had it before that.

Q. You transferred it even before there was any discussion of litigation against you?

A. They never discussed it, they just pounced right on me.

Q. The litigation had nothing to with it?

A. No.

Q. Now, you mentioned another \$90 car that you gave to a nephew.      A. Yes, sir.

Q. When was that?

A. In 1937 or 1938. I purchased a Master Nash from the estate for \$90 and gave it to George Douillard. [33]

Q. When did you do that?      A. In 1938.

Q. Does he still have it?

A. I don't know. I don't see those people.

Q. What other expenditures did you have on your list that you want to mention?

A. Well, I built an incinerator at Glendale, and that cost me \$25. I had painting done inside and I bought a new heater and that came to \$275, and I put a lovely porcelain sink in and then I had a door and another porch made in, so you could rent the room in front.



(Testimony of Melanie Douillard Woodd)

Q. Was it rented?

A. No. I think that family is still there.

Q. How much did it rent for?

A. \$35 a month.

Mr. Bowden: Q. Mrs. Woodd, Emile A. Douillard is a relative of yours?

A. He is a half-brother.

Q. And he sued you? A. Yes.

Q. And that suit was filed on January 17, 1939?

A. Yes.

Q. Do you want to check these dates with me, Mr. Knapp? As you know we were unable to get the file and I am reading from appellant's opening brief and I assume the dates set forth there are correct. [34]

Mr. Knapp: I will stipulate they are.

Mr. Bowden: Q. That was tried during the months of February and March and April, 1940?

A. Yes, sir.

Q. And the judgment was ordered in that case on April 2, 1940, and signed April 25, 1940; and thereafter there was an appeal taken. Now, Dr. Hovey also sued you, did he not? A. Yes, sir.

Q. And he filed his suit against you on April 11, 1940? A. Yes, sir.

Q. And issued an attachment on the same days?

A. Yes, sir.

Q. And that attachment was on the Glendale property—

A. On everything I had. Virginia and the Hobart note and Glendale.

Q. For what did he sue you, Mrs. Woodd?

A. For the attorney fees.

(Testimony of Melanie Douillard Woodd)

Q. What was the amount of his demand?

A. I think \$7,000.

Q. And whose attorney fees were they?

A. Mr. Heath and Mr. Knapp.

Q. That is Mr. Knapp that is appearing here as amicus curiae? A. Yes. [35]

The Referee: Q. \$7,000? What litigation did you have up to April 11, 1940? What were the attorney fees for?

A. Mr. Knapp will be able to tell you that.

Q. No, you will have to tell me that. They rendered some services for you? A. Yes, sir.

Q. In what connection?

A. In this suit. Emile Douillard vs. Woodd.

Q. They were appearing for you in this relative's suit? A. Yes, sir.

Q. And that trial had taken place as indicated, the suit had been filed in January, 1939, and judgment was ordered on April 2, 1940? A. Yes, sir.

Q. And they had rendered services for you in that suit? A. Yes, sir.

Q. Any other matters?

A. In a divorce matter also. Mr. Heath had been my lawyer for years and I had not paid him anything.

Q. When did he represent you in the divorce matter?

A. I divorced my husband four or five times.

Q. Did he make you a rate?

A. No. I just came in there every time and wanted [36] to—

Q. How much did he charge—

A. It all came in this, altogether.

Q. How much did he charge you for the first divorce?

A. I think \$150.

(Testimony of Melanie Douillard Woodd.)

Q. Did you pay him anything? A. No.

Q. How much did he charge you for the second divorce?

A. I don't know, I just kept going there.

Q. How much did you owe him on the divorces?

A. Oh, I don't know, maybe four or five hundred dollars.

Q. Had you paid him anything? A. No.

Q. Had you paid him the costs? A. No, sir.

Q. He had paid the costs? A. Yes, sir.

Q. Had you ever paid Mr. Heath any fees?

A. No; he paid the detective to follow him.

Q. Had you ever paid Mr. Heath any fees?

A. No.

Q. And when you inherited the money and got all of this cash from the estate did you pay him anything?

A. No, I didn't.

Q. Did he ask you for anything? [37]

A. Well, yes, sir, he asked me.

Q. Why didn't you pay him when you had all this money?

A. Well, I wanted to get myself a home and things first and I thought maybe I could fix it after that.

Q. What did he say when he asked you to pay him?

A. That is when the Douillard case was in there too?

Q. No—we are talking about the divorce cases that you had not paid him at all on, and you had had this inheritance and had all this money in the bank.

A. Well, when I was getting the divorces I had no money.



(Testimony of Melanie Douillard Woodd)

Q. Well, when he did ask you for the money what did he say? Did he say, "Madam, I have been carrying you in here for years and have gotten five divorces for you and I have not been paid, and I am getting tired of it"?

A. Well, just about that.

Q. You were still friendly, weren't you?

A. Sometimes I was and sometimes I wasn't.

Q. When he asked you for payment for fees for services what did you tell him?

A. I told him to try to get it from Mr. Woodd.

Q. What did he say?

A. He said he would try that and he did. I had \$2,000 alimony coming from Mr. Woodd and I wanted him to [38] collect that and take it out of that but he didn't get it.

Q. Did you think you were treating him right in not paying him?

A. Well, no.

Q. But the net result was you did not pay him?

A. I meant to pay him some time.

Q. What other services did he render for you besides the litigation that started in January, 1939, and the divorce cases?

A. Well, one brother was quarreling with my mother most of the time and tried to declare her insane and incompetent, and I would go to Mr. Heath a good deal on that and he would advise me what to do.

Q. Did he ever send you a statement for that?

A. No.

Q. Did he ever tell you how much you owed him for those services?

A. No, he didn't say.

Q. What other legal services did he render for you?

A. I had to sue George Douillard about this home.

(Testimony of Melanie Douillard Woodd)

Q. That is the property you finally sold?

A. I had to fight with all of those people for everything I did.

Q. When was that litigation?

A. Well, we didn't go to court about it.

Q. When was that? [39]

A. That was in 1938, I think.

Q. That was some of the money you used to build him a home? A. Yes.

Q. After you completed that then you had trouble with the lot? A. Yes, sir.

Q. And he was to pay you \$10 a month and he caused you so much trouble that you had it sold through the real estate agent? A. Yes, sir.

Q. Was it after you sold it or before that Mr. Heath rendered you the services? A. Before I sold it.

Q. How much do you think he was charging you for those services?

A. I don't know. He said he had an open account and some day he would give me the whole thing.

Q. What other services did he render you? Or were there other services in connection with this Emile Douillard suit?

A. Oh, yes, he fought right along with Mr. Knapp for seven years.

Q. Were there any other services?

A. Maybe to eject someone from a house or something like that. [40]

Q. But you never received a statement?

A. No.

Q. Then one suit was filed against you in January, 1939, and you didn't know it was going to be filed, did you? A. Not until I was served.

(Testimony of Melanie Douillard Woodd)

Q. That is what I mean. Had you had some discussion with them or had they said they were not satisfied with the situation?

A. No. They treated me very lovely for a whole year.

Q. Then you took the complaint in to Mr. Heath?

A. I was broke then.

Q. No, you were not broke in January, 1939, you had some property.

A. I had property, but I didn't have any money.

Q. You had rentals, some rentals.

A. Yes, I did on Hobart.

Q. Did you have discussions with him, what it would cost to represent you?

A. No. He said he didn't think it would be much of a case and he could not tell.

Q. Did he tell you he would defend you in the lawsuit and save the property for you if you would turn it over to him?

A. No, sir. [41]

Q. Nothing of that sort?

A. No, sir.

Q. You didn't imagine at that time you were going to have to turn it all over?

A. No, sir, I thought I would win.

Q. But if you lost you didn't think the whole property would go for attorney fees?

A. No, I didn't know. I had never been in a lawsuit before.

Q. You thought you would win?

A. Sure.

Q. But there was no statement made as to what it cost you or what the attorney fees would be?

A. No. When the judgment was put on me by Thurmond Clarke Mr. Knapp and Mr. Heath wanted some



(Testimony of Melanie Douillard Woodd)

kind of a settlement, they wanted \$7,000 and I thought that was too much money and I got an old friend I knew, a Mr. Martindale, and we went to court and contested that and \$4,000 was what it was gotten down to.

Q. At that time you assumed with the \$4,000 they would take the property away from you, you would have to give up everything to pay the attorney fees?

A. No. I didn't know how I was going to do it or how it was to be done.

Q. Did Emile Douillard get a judgment against you? That meant when you lost that case they would take this [42] property away from you.

A. I never gave it a thought that they would take it away. We were just fighting; they fought for seven years.

Q. And you thought \$7,000 was too much?

A. Yes, sir.

Q. And you contested the matter? A. Yes, sir.

Q. You went to court with an attorney?

A. Yes, sir.

Q. Do you recall testifying?

A. No. I don't think I got on the stand at all. Mr. Martindale spoke for me.

Q. You never received an itemized statement for their services? A. Yes, I think I did.

Q. Do you still have it? A. No, sir.

Q. How long was it after they got that judgment against you that they came out and took the property away from you; that Dr. Hovey came out?

A. I don't know. I think they executed right away because I had a year or so to redeem and I could not do it.

(Testimony of Melanie Douillard Woodd)

Q. Was there any discussion about being able to pay this \$4,000 and get your property back?

A. No, I don't think I talked about that. You see [43] we kept on fighting all of the time and getting in deeper and deeper. I see now where it was worth \$7,000.

Q. When did you make the arrangement to continue to live in the property? How did that come about?

A. Well, Mr. Heath spoke to Dr. Hovey. I asked Mr. Heath if I could stay there for a while and he spoke to Dr. Hovey, I think. You see Mr. Heath was my attorney and took care of everything. I didn't have to go to Dr. Hovey.

Q. Then after the account was assigned to Dr. Hovey you took the matter up with Mr. Heath?

A. Yes, sir.

Q. What did he say about your staying there; did he say you could? A. Yes.

Q. And did you make the arrangement that you would collect the rent for him? A. Yes, sir.

Q. And this litigation has been going on?

A. Yes, seven years and it is still going on.

The Referee: I think I have the general picture. Of course, I don't know anything about the litigation, the relative litigation; what was it about?

Mr. Bowden: As I understand it the Douillards sued Mrs. Woodd, and they claimed that she had made an oral promise to pay them a certain proportion of the estate, [44] irrespective of the terms of the will or the decree of distribution. Mr. Clements handled that matter and he represented the Douillards.

The Referee: Well, I would like to have a general understanding of it. I don't know that it is the issue at

(Testimony of Melanie Douillard Woodd)

all. It is just the question that there was a certain situation which arose that resulted in the filing of a suit that resulted in a judgment on April 25, 1940.

Mr. Clements: And the judge announced the judgment on the 2nd and signed it on the 25th. The original litigation was this: When Mr. Heath drew the will of Mrs. Donahue they provided for a \$10,000 legacy to Mrs. Woodd, and the other heirs objected to that and they claimed Mrs. Woodd promised if they would not contest the will she would divide the \$10,000 legacy so each one would get their share. When the estate was settled she refused to do this and they sued her for \$2,500 each, and they were successful; that is the original lawsuit.

The Referee: That is the suit in which they all apparently joined and then got several judgments.

Mr. Clements: That is correct.

The Referee: How long did the trial take? You were in the case at that time?

Mr. Clements: Yes, sir. We started in February and had several adjournments. I think the actual trial lasted about 12 days. [45]

The Referee: The question was whether or not there was this agreement by Mrs. Woodd to divide the \$10,000?

Mr. Clements: That is correct. It was a verbal promise. I have forgotten just when the trial started but it was about 10 or 12 days in trial.

The Referee: I would like to have this information, I don't know its pertinency here, but you have talked about some matters—what has been the progress of that matter and those judgments you referred to are final, I take it?

Mr. Clements: Yes, sir.



(Testimony of Melanie Douillard Woodd)

The Referee: What about this other litigation?

Mr. Bowden: I was coming to that. According to the records in the Douillard case the notice of appeal was filed January 12, 1940, and submitted to the District Court of Appeal in 1941, and finally decided by the Supreme Court on August 3, 1942, and I understand the Supreme Court affirmed the lower court.

The Referee: Those are the Douillard cases?

Mr. Bowden: Yes, sir.

The Referee: What about this—

Mr. Bowden: In the Dr. Hovey case against Mrs. Woodd. The case was tried on July 1, 1941, on the short cause calendar, and judgment entered July 3, 1941.

Mr. Knapp: Pardon me—July 8, 1941.

Mr. Bowden: The printed brief says July 3.

Mr. Knapp: Well, it is immaterial. [46]

Mr. Bowden: And then petition issued July 17, 1941, and the sheriff's sale was September 8, 1942.

The Referee: Now, what has been, if any, the litigation following that, between the parties? Have there been any actions to quiet title, or any further actions in the matter?

Mr. Bowden: There was case filed entitled Emile A. Douillard vs. Lloyd E. Smith, et al. That was filed against Lloyd E. Smith, Florence Smith, Melanie Woodd, Dr. Hovey, Mr. Knapp, and Mr. Heath, Superior Court case No. 486,331. Generally that case was to quiet title to the Glendale property.

The Referee: Has that case been tried?

A. Yes, sir, and judgment rendered in favor of the defendant.

(Testimony of Melanie Douillard Woodd)

The Referee: When was that judgment?

A. That judgment was—

Mr. Knapp: May I add to counsel's statement? That suit was tried in Department 17 of the Superior Court. I have the findings of fact here in that case. The case alleged fraud and conspiracy for the purpose of defrauding the plaintiff in the action by securing a judgment in the Hovey case against Mrs. Woodd. The findings were to the effect that it was not proved.

The Referee: And what is—

Mr. Knapp: That case then, after it was tried and [47] judgment was rendered was appealed and the Appellate Court sustained that and it went to the Supreme Court and was denied.

Mr. Clements: It was sustained in the District Court of Appeal and the petition for rehearing in the Supreme Court was denied.

Mr. Knapp: That is right. I was in error. It was sustained in the District Court of Appeal.

The Referee: In favor of the defendants against Emile Douillard?

Mr. Knapp: Yes, sir, then a hearing was denied in the Supreme Court.

The Referee: What files are in the District Court now? Someone mentioned something about some files being used by the District Court of Appeal.

Mr. Clements: Well, the original Hobart file and the Douillard case are in the Supreme Court. Puissegur, a relative, sued on the \$900 note of Mrs. Woodd. That case was decided in favor of the plaintiff and affirmed by the District Court of Appeal.

(Testimony of Melanie Douillard Woodd)

Mr. Knapp: And a hearing has been granted in the Supreme Court and is now awaiting decision.

The Referee: That has nothing to do with these matters?

Mr. Knapp: I don't think it has.

Mr. Bowden: Q. Now, Mrs. Woodd, shortly after April 2, [48] 1940, April 2, 1940, is the day that the judge ordered a judgment in the Douillard vs. Smith case—

Mr. Clements: No, the Douillard vs. Woodd case.

Mr. Bowden: Yes, where they sued you.

A. Yes, sir.

Q. About April 2, shortly thereafter you had a conversation with Mr. Heath and Mr. Knapp regarding their attorney fees, did you not? A. Yes.

Q. That took place in their office?

A. Yes, sir.

Q. Would you say it was the day after April 2 or would it be April 2, or don't you know?

A. I don't know.

Q. But it was shortly after that? In order to refresh your memory, Dr. Hovey filed a suit against you on the 11th of April, so it would be some time between April 2 and April 11, wouldn't it? A. I suppose so.

Q. Do you remember being there? A. Yes.

Q. What conversation did you have?

A. Well, Mr. Heath wanted his fee.

Q. Just tell us what he said and what you said and what Mr. Knapp said.

A. I don't remember. I think Mr. Knapp can tell [49] that better than me.

The Referee: Where was the meeting held?



(Testimony of Melanie Douillard Woodd)

A. In Mr. Heath's office.

Q. Did you go from court to his office?

A. I don't remember.

Q. But it was shortly following the court hearing?

A. I guess so.

Q. What did Mr. Heath say to you? Did he say, "I want to be paid," or would he talk about it or what?

A. Yes, your Honor, he said some arrangements should be made for his fee or something.

Q. What did you say? Did you agree to it or what happened? How much did he say you owed him?

A. Well, I think he said \$7,000 would be the fee.

Q. What did you say?

A. I thought that was too much.

Q. Did he say how much of that was for the present trial or did he say all of it was for the present trial?

A. I don't remember.

Q. Well, you spoke of the divorce fees.

A. Yes.

Q. It included everything, did it, up to date?

A. Yes, but I don't know that we talked about the divorce that day.

Q. But he mentioned \$7,000?

A. Yes, sir. [50]

Q. What did you say?

A. I said I thought that was too much. First I offered to give a piece of ground and Mr. Knapp said he didn't think much of that. He wanted his money.

Q. What ground were you going to give?

A. I guess Glendale.

(Testimony of Melanie Douillard Woodd)

Q. You proposed giving the Glendale property to them?

A. Yes, or selling it for the money.

Q. And that would leave the Virginia place for your home?      A. Yes, sir.

Q. Was anything said on April 2 about these relatives getting the judgment and they would take the property all away from you?

A. No, I don't think so. He just spoke of his own fee.

Q. Then later on did he tell you they were going to assign it to Dr. Hovey and he would sue or what; how did that come about?

A. Well, they sued me. I don't know how that came about between them and Hovey. I had not met Dr. Hovey.

Q. Well, that was a few days later?

A. Your Honor, I have gone through so much I cannot remember anything.

Mr. Bowden: Q. Mrs. Woodd, had either Mr. Heath or [51] Mr. Knapp ever discussed this with you before that time?      A. No.

Q. Had they ever rendered you any statement or demanded any payment for their services?      A. No.

Q. And on that day they told you, did they not, that they were going to file suit against you and have the court decide?      A. Yes, sir.

Q. And it was going to be a friendly suit?

A. That's right. And they did that.

Q. And they sued for \$7,000?      A. Yes.

Q. Then after that you went to see whom?

A. Mr. Martindale.

(Testimony of Melanie Douillard Woodd)

Q. Where was he?

A. In Glendale, and afterwards I met him at the Clark Hotel. He had no office.

Q. Who suggested you go to him?

A. My aunt.

Q. He put in an answer for you, didn't he?

A. Yes.

Q. And you agreed that a judgment could be entered against you for \$4,000?

A. I went to court and we fought it.

Q. But before that you wrote a letter to Mr. Heath [52] or Mr. Knapp saying, "I agree to pay \$4,000"?

A. No, I wrote a letter to Mr. Heath stating I thought \$2,500 was enough and I wrote one to Mr. Knapp stating I thought \$1,500 was enough.

Q. That would be \$4,000?

A. Yes, sir.

Q. Then when you went to court against Dr. Hovey, Mr. Martindale handed that letter to the judge and then he gave a judgment for \$4,000, and no one testified, did they?

A. Yes, someone was on the stand. They had a trial.

The Referee: Q. Were you in court?

A. Yes, sir, I was with Mr. Martindale. He spoke for me.

Mr. Bowden: Q. Didn't he just tell the court at that trial that you would be agreeable to having a judgment rendered for \$4,000?

A. I don't remember what was said. All I remember was we had a real court trial.



(Testimony of Melanie Douillard Woodd)

Q. How did you happen to write these letters to Mr. Heath and Mr. Knapp stating you would be willing to pay \$2,500 and \$1,500?

A. After I went home and thought it over I decided it was too much.

Q. Did they suggest you write a letter?

A. They did not.

Q. Did you write it the same day you left their [53] office?

A. That I cannot say but I know I went home and wrote those letters.

Q. What did you do with those letters?

A. I sent one to Mr. Heath and one to Mr. Knapp.

Q. Who appeared for Dr. Hovey at that trial? What lawyer was there?

A. I guess Mr. Heath.

Q. Was Mr. Knapp there?

A. I don't recall.

Q. Now, at that time you had appealed the case of Douillard vs. yourself, had you not?

A. I guess so.

Q. Who were your attorneys in that appeal?

A. Heath and Knapp all of the way through.

Q. And they were right up to the very end?

A. Yes.

Q. In other words, they were representing you in the Douillard case and at the same time they were suing you through Dr. Hovey to make you pay their attorney fees?

A. That's right.

Q. When you had this conversation with Mr. Heath and Mr. Knapp in their offices between April 1 and April 11, 1940, and as you say you told them you thought \$7,000

(Testimony of Melanie Douillard Woodd)

was too much, did you have any conversation with them about the charges for carrying on this appeal, if there was an appeal? [54]      A. No.

Q. Now, the appeal was not filed until June, 1940; did you have any conversation prior to June, 1940, about them taking the appeal for you?

A. Mr. Heath took sick and was in the hospital for several months and I think I went to Mr. Knapp and asked him if he would carry on with the appeal.

The Referee: Q. Was the \$7,000, the amount they had formerly billed you, was that to take care of the appeal also?      A. That I cannot say.

Q. Or were they to charge you other money in addition to that?      A. They didn't say.

Mr. Bowden: Q. When was the first time you had a conversation with either Mr. Knapp or Mr. Heath regarding the appeal from the judgment of Douillard vs. yourself?      A. I can't tell you that.

Q. Whose idea was it to appeal?

A. My idea. I decided that in the courtroom as soon as I saw I was losing.

Q. And you instructed Mr. Heath and Mr. Knapp to go ahead with the appeal?

A. Yes, sir. And Mr. Heath took ill and was in the hospital and Mr. Knapp worked alone.

Q. What arrangements did you have to pay them for [55] the appeal?

A. I didn't have any arrangements.

Q. But you already owed them \$7,000?

A. Yes, sir.

Q. Did you ask them how much it was going to cost to appeal this case?      A. No, I didn't.

(Testimony of Melanie Douillard Woodd)

Q. Did you expect them to do it for nothing?

A. No.

The Referee: Q. Have you paid anything for the appeal?

A. No, I have not paid them anything except they took the property.

Q. How much do you owe them for the appeal in the Emile Douillard case? A. I don't know.

Q. Was the \$7,000 to cover the appeal?

A. I imagine when they got it down to \$4,000 that would take care of it.

Q. And they were to go ahead in the future?

A. I don't know.

Q. Do you owe them any more money besides the \$4,000 judgment? A. I don't know.

Q. Did you schedule them as creditors for these additional services in your bankruptcy? [56]

A. No, just \$4,000.

Q. Then apparently at the time of your bankruptcy you didn't think you owed anything more?

A. I didn't. I didn't know it was going to go on and on like this.

Q. It had gone on for four years at that time?

A. Yes, sir.

Q. And those four years or three years of service, did you owe them anything for that?

A. I just have owed them \$4,000.

Q. You owed them in April, 1940, and they said \$7,000 and you agreed, but you beat it down in court to \$4,000. Now, they have rendered a lot of services since then, haven't they? A. Yes sir.



(Testimony of Melanie Douillard Woodd)

Q. And you have not paid them anything for that service?      A. No.

Q. Do you owe them for it?      A. I don't know.

Q. Were they to render it for nothing?

A. I wouldn't think so.

Q. Was the \$4,000 settlement on the suit up to April, 1940, was that to pay for this later work also?

A. I don't know.

The Referee: Well, I am trying to find out. They [57] said, "We want \$7,000 in April, 1940," and you said, "That is too much," and the court allowed \$4,000 after it had heard from you. Now, they went ahead after that and spent their time in your matter.

The Witness: The appeal was on then.

The Referee: Yes, but since then they have spent other time in your matters?

The Witness: Yes, sir.

Q. And you have not paid them anything for it?

A. No.

Q. Are you to pay it; do you owe it?

A. I don't know. They have not said anything to me about it. I just let Mr. Knapp go ahead and fight and fight. I didn't know there was going to be so much more; there is no use. There is nothing I can say.

Mr. Bowden: Q. Did Mr. Knapp or Mr. Heath ever send you any statements showing you owed them anything for this appeal?

A. I don't remember any.

Q. Do you know how much you owe them now?

A. No, I don't.

Q. You have no idea?      A. No, I sure don't.

(Testimony of Melanie Douillard Woodd)

Q. How would you find out that information?

A. I would not even ask about it. Why should I? I have not got anything. I cannot pay. [58]

The Referee: Q. Where do you get your support at the present time?

A. I work for the Fifth Street Store four hours a day.

Q. How long have you been working there?

A. Three years off and on; I have been ill.

Q. Then you get your rent free?

A. Yes, sir, and I have been ill for three months; they pay me at the rate of \$10 a week for support.

Q. When did you go to work at the Fifth Street Store? A. In 1943, I think.

Q. What did you do in 1941? A. Nothing.

Q. How did you support yourself?

A. Yes, I did work, too; I worked off and on in a little restaurant and got my food there.

Q. What restaurant? A. Jim's Restaurant.

Q. Where is that?

A. It was on the corner of—

Q. Was it in 1941 or 1940 or 1942 when you worked there?

A. I don't know. They fed me; that is all I know. They were my tenant and they let me come there and gave me a few cents and my food.

Q. And Mr. Heath and Mr. Knapp was taking everything [59] and you had nothing left?

A. They had to take it to pay the mortgages.

Q. Well, there was rent coming in?

A. Well, the cottage is \$20 and the duplex is \$25.

(Testimony of Melanie Douillard Woodd)

Q. Were you allowed to use any of that money?

A. No.

Q. You didn't have any money from the property?

A. No.

Q. You didn't collect the Glendale money?

A. No.

Mr. Bowden: Q. When did you first learn they had taken the Glendale property?

A. I was notified of the sheriff's sale.

Q. When was that?

A. I don't know; 1942 or 1943.

Q. You say you had an offer to redeem that?

A. Yes, the sheriff told me. I used to go down to talk to the sheriff.

Q. Where did you go to talk to the sheriff?

A. Down at the police station.

The Referee: Q. It would have been much easier to have talked to Mr. Heath.

A. He was sick. He had been sick for a long time.

Q. He could have done much more than the sheriff. He could have given you a number of years to redeem it.

A. Could he? [60]

The Referee: Sure. He is the one who is taking your property from you; not the relatives.

The Witness: Well, he is dead now. What am I going to do?

The Referee: Well, it is about time for adjournment; I think we had better put this over.

Mr. Knapp: I would like to call the court's attention to the question of privilege here. The agreement made was to carry on all of the work for her.



(Testimony of Melanie Douillard Woodd)

The Referee: I believe it would be better for the record, at this continuance, for you to clear that up.

Mr. Knapp: Furthermore, the compensation at the time involved the proposition that in view of the order of the court the probabilities were that the judgment creditors in the Douillard case would attach everything; therefore it was simply a race as to who would get the property.

The Referee: Well, I believe at the continuance you had better go over this and explain it. Do you want to go ahead with this objection part the next week? How much longer will it be from your position, Mr. Bowden?

Mr. Bowden: I imagine a couple of hours.

The Referee: We have Tuesday at 2:00 p.m.

Mr. Bowden: I could not be here.

The Referee: Well, Thursday at 2:00 p.m., or we could put it on in the morning.

Mr. Bowden: I am afraid I cannot be here on April 4. [61]

The Referee: What about Friday, April 5? We will put it down for the 5th at 10:00 o'clock. Then we will make sure the matter is concluded during the day.

Mr. Bowden: I have a short matter before Referee Dickson; could I attend to that?

The Referee: Well, supposing we put this on then at 10:30.

Mr. Bowden: Thank you.

(Court adjourned.) [62]

Melanie Douillard Woodd                      April 5, 1946,  
Hearing on Objection to Discharge.

The Referee: The matter of Melanie D. Woodd.

Mr. Bowden: Ready. Mrs. Wood, will you take the stand, please?

MELANIE DOUILLARD WOODD,

having been first duly sworn, on oath testified as follows:

Direct Examination

By Mr. Bowden:

Q. Now, Mrs. Woodd, at your last hearing I think you gave me this document which has a lot of items on the face of it.

A. To the best of my ability—

Q. Well, isn't that the document you used to refresh your memory when you were testifying?

A. Yes, sir, but I have made a new one since then.

Mr. Bowden: We will offer this as Exhibit A for the Trustee.

Q. Now, you have just handed me another document?

A. Yes, sir.

Q. Is this the document you have just handed me?

A. Yes, sir.

Q. What was the purpose of that document?

A. That was to correct this one. Mr. Laugharn [63] didn't quite understand this first one and we thought this one was a little more accurate, and it might not be altogether accurate, though.

Q. Who made out this document?

A. Mrs. Knapp typed them and Mr. Knapp helped me.

(Testimony of Melanie Douillard Woodd)

Q. Did you supply the information or did he?

A. Mr. Knapp helped me a great deal and I helped myself on some of these.

Q. Do you have any books and records to which you referred?      A. No, sir.

Q. Where are your books and records?

A. They have been destroyed years ago.

Q. When did you destroy them?

A. Mr. Clements had me in court, I don't recall whether it was in 1940 or 1941 in Judge Kauffman's court.

Q. That was on supplemental examination?

A. Yes, sir. The case was all over and Mr. Clements was satisfied after looking over all of the books and papers and things.

Q. Just answer the questions, if you will. That supplemental examination was in connection with the judgment obtained in the case of Douillard vs. Woodd?

A. No.

Q. What case was it?

A. Emile Douillard vs. Woodd. [64]

Q. That is what I said; in the Superior Court case.

A. Yes.

Q. And that was the case which was appealed, wasn't it, by Mr. Knapp?      A. Yes, sir.

Q. And the judgment was later affirmed?

A. Yes, sir.

Q. Now, was this examination you had after the District Court of Appeal had affirmed the case or before?

A. Before.



(Testimony of Melanie Douillard Woodd)

Q. Have you been in court in connection with that case since the judgment was affirmed by the District Court of Appeal?

A. Yes, I have been in court many times.

Q. With relation to the last time you were in court, when were your books and records destroyed; was it after the last time you were in court or before that?

A. Oh, no, after I was examined for something—I don't know; I had to bring all of these papers up there and after that I had no more—

Q. Just a moment. That was the examination in which they asked you about your property and where it was?

A. And all of my checks.

Q. Yes, and did you have your records with you at that examination?

A. I had everything I had, I guess. [65]

Q. How long after that examination did you destroy them?      A. I don't know.

Q. Was it a matter of months or weeks or days?

A. Oh, I can't tell you that.

Q. Can you tell us approximately when you were in court on this examination?

A. No, I cannot; I don't remember the date.

Q. Do you remember the year?

A. I went to court in 1939 the first time.

Q. No, I am asking you now about the time you went in to be examined about your property.

A. I cannot tell you, that must be of record.

Q. Can you give us your best recollection, was it in 1941?      A. I don't remember.

Q. Was it in 1940?      A. I don't remember.

Mr. Crandall: I think the records will show.

(Testimony of Melanie Douillard Woodd)

Mr. Bowden: No, we don't have that here. The date of that supplemental examination.

The Witness: I don't remember it.

Mr. Bowden: Q. Now, you have a copy of this document, Trustee's Exhibit 1, have you not? This is Trustee's Exhibit 1, is that a copy of what you are referring to now? [66]

A. Yes, that is the one here.

Q. Now, you show on this the total amount received was \$21,470, is that correct? A. Yes.

Q. Received from the estate of Emily S. Donahue?

A. Some from the estate and some from my own.

Q. Now, the total cash you got from the estate was \$11,500? A. Yes.

Q. What became of the rest of the cash that was in the estate, to the extent of approximately another \$10,000?

A. That was divided among the heirs.

Q. Well, you paid out \$4,764.66 to the heirs yourself, did you not? A. You mean my share?

Q. No, I don't. You recall you had approximately \$21,000 and some dollars in the estate, cash, is that correct?

A. I don't know how you arrive at that. My fourth would have been cash if I had gotten it in cash.

Q. I am not asking you that. How much cash was there in the estate of your mother when the decree of distribution was made? A. I don't know.

Q. Well, you were the executrix, were you not?

A. Yes, but I have forgotten, it has been so long. [67] There is a book there that will tell you all about it.

Mr. Bowden: Mr. Knapp, do you have a copy of the decree of distribution? We don't have the court file.

(Testimony of Melanie Douillard Woodd)

(Mr. Knapp hands instrument to Mr. Bowden.)

Mr. Bowden: This is not it; this is not what I want.

Q. Well, Mrs. Woodd, let's assume that there was approximately \$20,000 in your bank account as the executrix at the time of the distribution; you testified at your last hearing, I believe, that you did not distribute the property according to the decree of distribution between the heirs and yourself, is that correct?

A. Before the money and properties were distributed the heirs got together and chose what pieces of property they wanted and left only one building, that was the Vermont building, and the money was divided among the other children. Emile Douillard took his inheritance all in cash, nearly all, and one big apartment house; and Frank Douillard took cash and two beautiful homes at Manhattan Beach and Puissegur took some notes and bonds and his sister took some mortgages, I think, on property, and I took the big building and to get that building I had to pay my brothers or the estate \$4,764.66, that is before I got my hands on the \$10,000. That was taken out.

Q. Is that all of the cash you paid the other heirs in the estate?      A. That is all. [68]

Q. Was that out of your share or out of the estate fund?

A. No, that was out of my bequest.

Q. Out of the \$10,000?

A. That is right. Then I purchased the equity in another building from my brothers and paid \$375 for the equity, there was a \$6,500 mortgage on that.

Q. Now, on this list that you have given me, or the copy, you say on about line 29: "Furniture for the Virginia Avenue, \$1,000."      A. Yes.



(Testimony of Melanie Douillard Woodd)

Q. Where did you get that figure from?

A. Well, in my mind, more or less. I think it was a whole lot more than that. I had some very nice furniture.

Q. Do you have any of the receipts for that furniture?  
A. No.

Q. Where did you purchase the furniture?

A. Some at May Company and some at Sears Roebuck and some, I think it was the Los Angeles Furniture Company.

Q. In other words, that is just a guess, that it cost a thousand dollars; you have no records?

A. No, I have not.

Q. Is that true on the item for furniture for the cottage?  
A. Yes, I would say so. [69]

Q. When did you first discover you had made a mistake in making up this list, which is Trustee's Exhibit 1? When did you first discover that was not correct?

A. Well, I didn't discover it. The Referee said he didn't understand it and he would like to have us make up some figures or something to that effect, so I made another one.

Q. Well, you made the whole list over, didn't you?

A. I didn't copy it from that. I just threw it away.

Q. Well, take a look at the list you gave us. Now the figures are different, are they not?

A. Yes, but they come to the same thing.

Q. Well, on the list that you gave us the other day it is \$19,390. On the list you gave us this morning it is \$21,470.

Mr. Knapp: May I have those figures again?

Mr. Bowden: On Trustee's Exhibit 1, the total receipts are \$21,470; on Trustee's Exhibit 2 it is \$19,390.

(Testimony of Melanie Douillard Woodd)

Now, on Trustee's Exhibit 2 you show total expenditures of \$18,875.66. On Trustee's Exhibit 1 you show total expenditures of \$21,470.

Q. Now, what I want to know is when did you first discover the discrepancies in the figures?

A. I didn't even look at that. Mr. Knapp helped me with this, and helped me with that one, and when Mr. [70] Laugharn said he didn't understand it and he wanted some correct figures or something, I went up to Mr. Knapp's and we sat there about four hours and he asked me questions and I gave him these figures.

Q. Did you discover when you went up and talked to him that you had made an error?

A. No, I didn't even look at that. I promise you that.

Q. What was the purpose of making up this list you have this morning?

A. Mr. Knapp said this more correct.

Q. Do you know whether it is now correct or not?

A. I know it is the amount of money I got.

Q. How do you know that?

A. Because in that other one you started out with a figure and you had that \$4,200 cottage in there—I don't know how to express myself any more, but you didn't have the figures right in the beginning.

Q. If you have destroyed all of your books and records how do you know these figures are correct?

A. More or less they are. I can prove some of these, if you want to go to the mortgage company.

Q. Did you get your information from them?

A. No.

Q. You got all your information from Mr. Knapp, did you? [71]

(Testimony of Melanie Douillard Woodd)

A. Not all of it.

Q. What information did you get from Mr. Knapp?

A. Well, I got that, \$4,764.

Q. And the \$375 and the \$4,764.66 is the amount of money you paid out of your \$10,000 legacy?

A. Yes.

Q. And you got \$375—

A. Yes, that was taxes on the Vermont property.

Q. Did you pay those taxes? A. I did.

Q. When were they paid?

A. I got the property in October, 1938, and I paid them in November, that is the December payment.

Q. Now, look at those items again, under Paid Out, 1732 South Vermont, \$375.

A. That is the purchase price.

Q. \$375?

A. That is right. The building was sold to me for \$500 and the heirs allowed me to take off one-fourth, or \$125, and I had to pay them \$375.

Q. Is that the \$375 in the \$4,764.66 item?

A. No, that is another building.

Q. That is the Vermont building that you sold to Mr. Heath? A. Yes.

Q. Then he deeded back to you later, didn't he? [72]

A. No. He says he did. I don't remember on that.

Q. What became of it? A. He lost it.

Q. How did he lose it?

A. The bank foreclosed on him.

Q. Didn't he deed it back to you? A. No.

Q. You say he said he did.

A. I thought he said he did but I don't remember that. All I know is he got the property and collected the rent.



(Testimony of Melanie Douillard Woodd)

Q. You paid the \$375 to whom?

A. To the Douillards.

Q. Not to Mr. Heath?

A. No; to the Douillards.

Q. Mrs. Woodd, are you sure that the \$4,764.66 item that you put as expenditure in the settlement of the estate, are you sure that was not paid out of the estate fund?

A. I am positive.

Q. What became of the estate fund?

A. The Douillards got it all except this one Vermont property which I had to pay, it came to \$16,500, and my share was \$10,800 and something, and I had to pay that to the Douillards \$4,764.66 out of my bequest.

Mr. Bowden: That is all.

The Referee: Any questions? [73]

Mr. Crandall: No questions.

Mr. Bowden: I would like to offer all of the evidence heretofore received in this proceeding under the bankrupt examinations under the first meeting of creditors, if the Court please.

Mr. Crandall: What date would that be?

Mr. Bowden: I think it was about January 7. I have not got the exact date. The transcripts are here, or they were at the last hearing. They were written up.

The Referee: The first meeting was apparently September 17.

Mr. Bowden: Yes, that was the first.

The Referee: 1945. Now, that was just the testimony of the bankrupt, was it not?

Mr. Bowden: That is right.

The Referee: Do you maintain that that is in any way related to her testimony in this proceeding? If it is

(Testimony of Melanie Douillard Woodd)

merely cumulative there is no reason to have it supplementing this record; it would only be on the theory there was something she should be bound by.

Mr. Bowden: I had particularly in mind her testimony regarding the deposit of the \$6,500. She deposited that, I believe she testified, in a building and loan association and the next day put it into the bank.

The Referee: I suggest you take that transcript—is that the one of the hearing of September 17? [74]

Mr. Bowden: Yes, sir.

The Referee: Or any other hearing, as far as the testimony of the bankrupt is concerned, and just read it over and offer those parts which are inconsistent with the present testimony, if there are any. Or to save time, if there is no objection, we will receive the whole transcript, subject to her right of explanation of it.

Mr. Crandall: No objection whatsoever, your Honor.

The Referee: Well, this will be received. I just thought it would clutter up the record unless there are some variances. Now, that includes what? You have the transcript there of what date?

Mr. Bowden: September 17, 1945.

The Referee: And that is the testimony of the bankrupt?

Mr. Bowden: Yes, sir. The rest of this transcript is testimony of Dr. Hovey which was given at a later date. I am not offering that.

The Referee: Do you have another transcript there?

Mr. Bowden: No. That is Dr. Hovey's, too.

The Referee: All right.

Mr. Bowden: That is all, if the Court please.

Mr. Crandall: I would like to call Mr. Knapp. [75]

DANIEL A. KNAPP,

having been first duly sworn, on oath testified as follows:

Direct Examination

By Mr. Crandall:

Q. You are familiar with the transactions entering into the probating of the estate of the mother of Mrs. Woodd?

A. No, not particularly. Not very much.

Q. Well, are you familiar with what the records of the estate show?

A. Yes, I have Mr. Heath's records.

Q. And you have read the specification of objection to discharge that was offered to the court by George T. Goggin?

A. I have.

Q. And from your knowledge of the receipts and disbursements found from the records that you have and which are available to you, are you able to give to the court any information as to what money or properties Mrs. Woodd received from this estate and what disbursements were made?

A. The records of the case show she received \$10,000. But she received a house or rather a commercial property on Vermont Street, and that she paid out \$4,674.66 and that she paid out an inheritance tax of \$375 on the same. That is all the record shows except it also shows there was quite a considerable amount of cash and when the [76] parties made their agreement to—the records show the cash was distributed entirely between the heirs, Emile Douillard, Frank Douillard and Puissegur Douillard, and his sister, I have forgotten the name.

Q. And you were a party to an action in the Superior Court, the Superior Court of the State of California, in



(Testimony of Daniel A. Knapp)

and for the County of Los Angeles, entitled Hovey vs. Woodd?      A. That is true.

Q. Can you explain that situation? Just what was done and what was finally determined?

A. That action stemmed in a conversation in the office of Mr. Heath a day or so after a judgment was ordered in the case of Douillard vs. Woodd, and in that conversation Mrs. Woodd was present, Mr. Heath, and myself; and at that time her attention was called to the fact that the probabilities were that the order of the court would mature in a judgment against her for \$7,500 with costs, and either Mr. Heath or I asked her what she wanted to do under that situation. She said that she wanted to appeal, that she thought the judgment was an absolutely unjust judgment; she wished to appeal. We told her that it would require a great deal of extra work, that there had been a large amount of testimony and the transcript would be large, but we would have to examine it minutely, and whether the appeal was made upon a bill of exceptions or a transcript there would be a motion for a new trial and other motions [77] and a brief, until it reached possibly the Supreme Court; somewhere in that time Mr. Heath made the statement, "You have paid nothing on this, Mrs. Woodd, so far in the way of fees, either to Mr. Knapp or myself, and there will be a great deal more of fees that will accumulate in this case; you also owe me for a large amount of work that I did prior to the time the Douillard case came up." Mrs. Woodd asked about how much and he said, "Actually I think about \$2,000, and I think that the amount that would be due on this Douillard case, including the appeal and all, would be \$5,000, that is rough, that is \$7,000." And Mrs. Woodd

(Testimony of Daniel A. Knapp)

said she thought that was too much but she would be willing to give her Glendale property, but I told her at that time that I didn't think it wise or advisable to settle with her attorneys in that way, that I thought the best plan of getting at this and so there would be some feeling of contentment on her part, would be to take this before a court in a friendly suit and let the court decide on the amount that was due, and in the meantime we would try to attach anything we could find that she possessed, but it would be in pursuance of our action and in no other way, and we asked her what was her reaction on that and she could find no objection to it and said she was willing to pay whatever the court might determine. The next day or so after that we brought an action for \$7,000 and we also attached at that time the Glendale property, the Virginia Avenue property and all amounts [78] due and owing to Mrs. Woodd in the matter of *Los Angeles vs. Winter*, 444,092, in the Superior Court; and also the Yarborough note; the amount due and owing at that time being \$689.49. The amount due and owing under the Winter case being \$436.50.

In pursuance of those matters a judgment was issued on July 8, 1941, and in the matter of *Hovey vs. Woodd* for \$4,000 and \$20.25 costs. I was not present at that time except just as the case was closing and know nothing about how much evidence was introduced or anything else, except that there was a stipulation presented to me to sign, in which it was agreed that the amount of the judgment should be \$4,000 as between Mrs. Woodd, Mr. Heath, and myself. The Yarborough note of \$689.49 and the Winter case of \$436.50 had been determined prior to that time and the amount of the two, \$1129.99, sub-



(Testimony of Daniel A. Knapp)

tracted from that left a balance due and owing on the judgment of \$2,894.26.

Q. What judgment are you talking about?

A. I am talking about the Hovey vs. Woodd judgment, entered July 8, 1941. The Yarborough note and the Winter case, the amount that was credited to that judgment. On September 2, 1942, the Glendale property was sold under execution and in pursuance of the attachment made. The interest accruing at that time on the judgment or the \$2,894.26 was figured at 7 per cent, \$236.36, being one year and two months, and making the judgment at that time [79] \$3,130.62, with the sheriff's fee and execution at \$61, making a total of \$3,181.62, as the net judgment at that time. The Glendale property was sold for \$1,250, leaving a judgment debt of \$1,931.62. Since that time an action was brought to set aside that execution and that sale, and it was determined in favor of Hovey, it was appealed and finally the Supreme Court sustained the Hovey judgment.

Q. That suit was a suit in fraud, wasn't it?

A. Yes.

Q. And setting up the fact that this Hovey judgment was obtained by fraud?

A. Yes. The findings of fact and conclusions of law are on my desk. On April 12, 1943, a sale was made on the Virginia Street property, under execution. There was an accumulation of interest at that time of \$86.39, making a complete judgment debt of \$2,012.01. The sheriff's fee was \$25, making an entire judgment debt of \$2,037.01. The Virginia Street property sold for \$1,775, leaving an unpaid balance on the judgment of \$62.01, which still remains. All of these properties, these real



(Testimony of Daniel A. Knapp)

properties, were heavily encumbered. The Glendale property had many termites in it and would cost a great deal to repair it. In the Virginia Street property we paid Mrs. Woodd \$1,000, I don't know when, some time prior to that time, for a homestead interest which she had, which is listed in her list, and upon that basis paid the \$1,775. That is the history of the attachments and [80] of the executions and of the balance.

Q. And those sales were made by the sheriff?

A. They were made by the sheriff of Los Angeles County, after publication and all of the regulations of the law.

Q. Now, is there any other information or data that you can give to the court from which—which may enable him to arrive at a just decision on this motion that has been made or this—

A. No, to my personal knowledge I know there is as far as her estate is concerned, no part of estate belonging to her that has been sequestered for her or held back for her, and none of the moneys received from that estate belong to her, and that there is no fraud in the matter. I also know the judgment of \$4,000 included an amount that was due to Mr. Heath, I take it something over a thousand dollars, so that the net amount that was charged to her or rather entered against her for services in the Douillard case was something less than \$3,000. The Douillard case was an exceedingly difficult case, perhaps she came in a hundred times for consultations, there were four depositions in connection with it. There was a bill of exceptions that was made; afterwards I believe Mr. Clements was authorized to make another one in the place of it. He then had the transcript taken down and when

(Testimony of Daniel A. Knapp)

the case was appealed we asked for and obtained an order to prove before the Appellate Court certain errors [81] that were made. The transcript itself was lengthy and in accordance with those matters. There was a long brief, appellants' opening brief, and a final brief, and the petition to the Supreme Court. The matter of the order to prove or rather the petition to prove, required perhaps a month to go over the records and go into it exhaustively, I don't know that I ever did any more excruciatingly hard work. Owing to Mr. Heath's ill health most of it was done by myself. The cost of the brief and the cost of the depositions and the cost of the transcript and the cost of the appeal was paid by Mrs. Woodd. I think that before they were paid for by her Mrs. Knapp advanced the money for the payment of them and they were thereafter paid by Mrs. Woodd personally.

Q. Do you know whether or not Mrs. Woodd received any extensive cash in the distribution of the estate of her mother?

A. I only know the records, and the records show she received no cash whatsoever.

Mr. Bowden: Q. Well, Mrs. Woodd testified she got \$10,000.

A. Except the \$10,000. I don't mean she got no cash; I meant what she got out of the estate—aside from her legacy.

Q. You say you executed on the Virginia Avenue property? [82] A. Yes.

Q. Was there a homestead on there at that time?

A. A single woman's homestead, which as you know is \$1,000.

(Testimony of Daniel A. Knapp)

Q. And you paid that to Mrs. Woodd?

A. Yes, paid that to Mrs. Woodd, \$1,000 cash.

Q. Why did you give her \$1,000 cash at that time?

A. There was some appraisers appointed and their estimate there was that there was \$1,000 that should be paid to her. We had two appraisers.

Q. Who were the appraisers?

A. At this time I cannot recall. It is probably in the records. I tried to find that but couldn't. They would be in the files.

Q. Why did you pay her the thousand dollars?

A. Because we wanted the property free and clear from the homestead.

Q. What was the value of the property at that time?

A. Well, I think that under the theory of the appraisers, the value of the property was \$2,775, over and above the encumbrances upon it.

Q. How was the sale handled? Did Mrs. Woodd give you a release of her homestead lien before you sold under the sheriff's sale, or did you file the procedure set out in the notice to sell the homestead property? [83]

A. There was appraisers appointed; the homestead was paid, I think beforehand, but I am not sure.

Q. Under the agreement with Mrs. Woodd?

A. Yes.

Q. Who paid the thousand dollars, you or Mr. Heath?

A. Mr. Heath paid it.

Q. Now, Mr. Knapp, you filed the case of Hovey vs. Woodd on April 11, 1940, is that correct?

A. That is correct.



(Testimony of Daniel A. Knapp)

Q. And at that time did you know that Mrs. Woodd had several thousand dollars in a bank account?

A. No, Mr. Bowden. In the conversation held in our office we asked her whether she could pay any cash upon her fees or not and she very carefully at that time explained to us what she had done with her money and it appeared to us she had no cash.

Q. Why didn't you ask her for your fees when you knew she had the money?

A. I didn't know at any time anything about her money. As I explained a few moments ago, I was not a party to the Douillard estate, I was not her attorney. What Mr. Heath may have thought or what his idea may have been I don't know. I supposed she had money up until the time we had this conversation. I presumed at all times it was merely a matter of asking and we could get part or perhaps all of our fee from her. [84]

Q. You had a separate arrangement with Mrs. Woodd regarding your fees—that is separate from Mr. Heath?

A. I never had any arrangement; never told her what I would charge or anything else.

Q. I mean as to your services.

A. Well, yes. In my original conversation she came to me and asked me to help Mr. Heath, that he was not in any too good health and she would pay me what she had to pay him; the amount, she said.

Q. Did you ask her for a retainer fee at that time?

A. No. I must confess that very seldom in a case involving that type of case have I asked for fees.

Q. Was that conversation you had with her before or after the estate was distributed?

A. Well, it was after the estate was distributed.

(Testimony of Daniel A. Knapp)

Q. Did you have anything at all to do with the distribution of the estate?      A. Not a thing.

Q. Did you know Mrs. Woodd before that professionally?

A. I had met her in the office casually.

Q. But you had not had any professional dealings with her?

A. None at all. She was Mr. Heath's client.

Q. And the first time you were brought into the case was in this case of Douillard vs. Woodd? [85]

A. That was the first time.

Q. Didn't you know on April 10, 1939, that Mrs. Woodd had money in the First National Bank at Fifth and Spring Streets?

A. No, I didn't know anything of the kind.

Q. Didn't you know in June or July, 1939, she got \$7,500 cash from the sale of property?

A. From the sale of property?

Q. Yes.

A. No, I don't believe it, Mr. Bowden.

Q. How much was it, do you know?

A. What year did you say?

Q. 1939; June or July.      A. Oh, in 1939?

Q. Yes.

A. Well, I know nothing about any sales of property. I don't know what she sold in that time. I only have our records here. That must have been an estate matter.

Q. Well, what is the \$6,400 item that is on this sheet that Mrs. Woodd gave me, that has been marked Trustee's Exhibit 1, isn't that the sale of property in 1939?

A. This \$6,400?

(Testimony of Daniel A. Knapp)

Q. Yes.

A. Yes. Now, as far as that \$6,400 is concerned, [86] Mr. Bowden, you know I had nothing to do with that at all. Whatever that amount is it is a matter—she said it was a net amount but it is all hearsay to me.

Q. Mr. Knapp, here is what I am trying to get at—if you knew Mrs. Woodd had funds of that proportion why didn't you ask her for your fee?

A. I never knew anything about the sale of this property at that time.

Q. When did you ask her for your fees, was it April 11, 1940? A. Yes.

Q. And you had tried that case for her and done all of that work and received nothing for your fee up to that time? A. Precisely.

Q. Did you ever give her a bill or a statement?

A. No. We went over it orally.

Q. And as far as the Hovey suit was concerned, that was a stipulated judgment, was it not?

A. The only thing I know is a stipulation was given to me for signing and Mr. Heath stated there was evidence taken but I don't know anything about it.

Q. But the facts were you sued for \$7,000 and then Mrs. Woodd wrote you and Mr. Heath a letter saying she would agree to \$4,000?

A. She wrote that in September. [87]

Q. And that letter was used in the trial of the case?

A. I don't know anything about it.

Q. Now, you attached the property on the same day the Hovey suit was filed?

A. The matter of the attaching was later, Mr. Heath.



(Testimony of Daniel A. Knapp)

Q. Well, according to the records it is the same day, April 11, and the Judgment was on July 3, 1941. Did you have anything to do with the issuance of the execution?

A. Mr. Heath attended to that entirely.

Q. Did you know the sheriff's sale was not held until September 8, 1942?

A. Yes, sir. I knew that it was not held until that time.

Q. Why did you wait that long to hold a sale under the execution?

A. I don't recall. I remember a conversation with Mr. Heath in connection with that in which he stated we should be in no hurry in connection with this, that it was best that we would hear in some way from the Douillards, whom we understood might wish to enter in upon the picture in some form or other.

Q. Isn't it a fact it was then that you knew that the Douillard case had been affirmed in the Supreme Court, that is before September 8, 1942?

A. The affirming of the decision of the Supreme [88] Court had nothing to do with the taking of the execution.

Q. When was it affirmed, do you know?

A. No, I don't know.

Q. The record shows it was affirmed August 3, 1942.

A. Possibly so.

Q. And the sheriff's sale was September 8, 1942.

A. Possibly so. I know it was in September.

Q. Now, Mr. Knapp, what interest do you hold at the present that formerly belonged to Mrs. Woodd; what

(Testimony of Daniel A. Knapp)

property do you have an interest in formerly belonging to Mrs. Woodd?

A. I have no interest in any property that formerly belonged to Mrs. Woodd, save and except the Virginia Avenue property.

Q. That is the property for which she was paid \$1,000?

A. Mr. Hovey is the trustee and I think the arrangement between Mr. Heath and myself was two-fifths of that would be mine and three-fifths his.

Q. What interest does Dr. Hovey have in that property?

A. Dr. Hovey stated to me, and that is all I know about it, that there were certain sums of money due and owing from Mr. Heath but so far as any direct money that was paid to Dr. Hovey I don't think there was, unless it was trustee fees.

Q. You and Mr. Heath assigned your claim for [89] attorney fees against Mrs. Woodd to Dr. Hovey?

A. We did, with the understanding he was to prosecute it as the agent or trustee and hold it in the same way.

Q. Hold it for you and Mr. Heath? A. Yes.

Q. Under what arrangement, 50-50 basis?

A. No, as I say, if I recall the agreement it was two-fifths and three-fifths.

Q. You had a written agreement?

A. Yes, sir, with Mr. Heath.

Q. Why haven't you settled with Dr. Hovey since this judgment was obtained? Why does he still continue to hold the property?

A. I have never been in a hurry about the settlement of that and the property is unsold. When the Glen-

(Testimony of Daniel A. Knapp)

dale property was sold we did divide. This other property has never been sold and until it is sold there will be no division.

Q. Mr. Heath is now deceased?

A. Yes, and Mrs. Heath is the executrix of his estate, and I am the attorney for Mrs. Heath.

Q. What arrangement, if any, did you make with Mrs. Woodd regarding living on the property, the Virginia Avenue property?

A. She was to collect the rents and as remuneration [90] for collecting the rent she was to receive an apartment.

Q. Did you make the arrangement with her?

A. I did not. That was made by Mr. Heath.

Q. Now on April 11, 1940, when this Hovey case was filed against Mrs. Woodd did you represent Dr. Hovey in that matter?

A. With Mr. Heath, yes, sir.

Q. You were the attorney of record for him?

A. Yes.

Q. And while that case was pending you also represented Mrs. Woodd in her appeal in the Douillard case?

A. Yes, sir.

Q. And you continued to represent her right up to August 3, 1942, when the Supreme Court finally decided it against her?

A. That is right.

Q. And when you made this arrangement with Mrs. Woodd to pay you and Mr. Heath \$4,000 attorney fees, did that include the attorney fees for prosecuting the appeal or were they just the attorney fees to date?

A. No, it included the fees for prosecuting the appeal.



(Testimony of Daniel A. Knapp)

Q. Do you know what proportion was allowed for prosecuting the appeal and the services which you had rendered in the trial of the action, that is, the proportion of the fees? [91]

A. I don't think that was ever discussed. It may have been. I think there was some discussion about that but I don't recall it.

Q. Do you have a copy of the Hovey complaint here?

A. No, I haven't.

Q. Didn't that complaint allege that the fees were all due and owing at the time the complaint was filed?

A. It alleged that there had been a contract made for the fees, yes, sir. I think that contract set out, I think it set out how much was to be charged on the appeal. Just offhand my recollection is that it was \$2,500. That could be an error.

Q. How much do you claim Mrs. Woodd owes you to date?

A. She does not owe me anything.

Q. Isn't there a balance due on that \$4,000?

A. Oh, you refer to the remaining judgment. That is on the judgment, but not from her personally.

Q. The judgment is against her, is it not?

A. Oh, yes. I am forgetting it.

Q. You mean you don't claim she owes you any more?

A. I am not asking for anything further.

Q. What is the value of the Virginia property now?

A. I have not the least idea, because properties are in a condition at the present time where they are liable to be of any value. [92]

Q. What is there against the Virginia Avenue property?

A. I cannot tell you.

(Testimony of Daniel A. Knapp)

Q. Approximately.

A. I don't know. In fact I am utterly at a loss to understand the question but that is all right. I will answer it.

Q. Didn't I make myself clear?

A. Yes, but I don't understand why on a judgment, having been passed upon in a legal form, it makes any difference, but I will answer the question the best I can. I don't know what the amount of the encumbrance is. Incidentally this whole thing has been passed upon and is *res adjudicata*, at least as far as the State Court is concerned.

Q. So what is your recollection of the amount of the encumbrance on the Virginia property?

A. I have no recollection.

Q. Is it \$5,000?

A. I have no recollection. Mr. Heath had charge of all those and that accounts for the fact that I have no particularly recollection.

Q. Don't you claim the Virginia property is now your property?

A. Certainly but I have not investigated personally to ascertain that.

Q. Then you don't know what is against it? [93]

A. No.

Q. What is the income from it?

A. Mr. Hovey has that and has kept the account and he is receiving a sum of money for his services.

Q. Didn't Dr. Hovey have those accounts kept in your office? Didn't Mrs. Knapp keep them?

A. Mrs. Knapp may have kept them for Dr. Hovey but I have not examined them.

(Testimony of Daniel A. Knapp)

Q. How about the Glendale property, when was that sold? A. Last fall some time.

Q. How much was it sold for, do you know?

A. I cannot give you the figures here.

The Referee: I thought that was sold on execution on September 2, 1942. A. That is right.

Mr. Bowden: It was, but it has been resold.

A. Oh, I understand his question. After the execution, whether the judgment creditors sold the property, and that was sold last fall by them and the net amount I don't recall.

The Referee: Q. You stated that a while back the Glendale property was sold and divided. A. Yes.

Q. How much did you get out of that and when?

A. Well, my recollection is that I received \$1,000, [94] maybe \$1,200 or something of that kind.

Q. That would represent what per cent of the money?

A. It would be two-fifths, I think.

Q. How much was given to Dr. Hovey?

A. Dr. Hovey by an arrangement with the heirs of Mr. Heath was allowed \$1,200 on the debt that was owed by Mr. Heath.

Q. And what did Mr. Heath's estate get upon the sale of the Glendale property?

A. About \$300, I think.

Q. Well, it would really be three-fifths, wouldn't it, something more than you got?

A. Well, I don't have the exact figures here. Whatever they are, that amount was due and owing to Mr. Heath.

Q. Now, just how did you handle the homestead rights of Mrs. Woodd, that is not clear to me. You mentioned



(Testimony of Daniel A. Knapp)

two appraisers and you mentioned a sale price of \$1,775, an execution sale?      A. Yes, sir.

Q. And you mentioned the fact that \$1,000 was paid by Mr. Heath to Mrs. Woodd.

A. That followed the statute and as I told you a while ago, I didn't see that. Mr. Heath did it.

Q. Did you see a thousand dollars handed to Mrs. Woodd?      A. Oh, no. [95]

Q. Did you ever see a check?      A. Oh, no.

Q. Was the thousand dollars paid to Mrs. Woodd?

A. I believe it was. I don't believe Mr. Heath lied about it. Mr. Heath said so and so did Mrs. Woodd.

Q. That would be when, that that was paid?

A. That I cannot state to you. I know it was about the time of the execution.

Q. What was the cost of the briefs on appeal and so forth in this suit that was paid for by Mrs. Woodd?

A. Now, this statement I am making to you is more or less of a shadowy recollection but it seems to me that the entire cost of the appeal, including the briefs, transcripts and all ran about \$387.

Q. Do you know where Mrs. Woodd got that money?

A. Yes. No, I will withdraw that. It seems to me she stated she borrowed some from the bank and some other source, I don't know where.

Q. Now, the original accounting stated by Mr. Heath of the \$7,000 or \$7,500, that included what Mrs. Woodd owed Mr. Heath and also the work on the Douillard case up to that time, and also the appeal, is that correct?

A. That is right

Q. Then that was cut down to \$4,000?

A. Yes.

(Testimony of Daniel A. Knapp)

Q. And that included the attorney fees on the [96] appeal? A. That is true.

Q. Why were the execution sales held up until after the court passed on the Douillard appeal, is there any particular reason for that?

A. The only thing I would recall in connection with it, as I have said before, it was entirely under Mr. Heath's charge, but I do recall a conversation with Mr. Heath to the effect that there might be some kind of an attack upon the proceeding and he wanted to give ample opportunity for that attack to come before there was any sale, if there was to be such an attack, and that the records were open and there was every opportunity to proceed if they wanted to.

The Referee: This matter you have referred to, I think two or three times, that is the fact of the court passing on this, would you explain about that?

A. I don't understand.

The Referee: Some fraud action or something like that. A. That was an action brought by—

The Referee: Well, we might adjourn now.

Mr. Knapp: I wish we could get through. I have some very important matters this afternoon. That was a case brought by Emile A. Douillard against Lloyd E. Smith and Florence Smith, who were the owners of the Glendale property, Melanie Woodd, Mr. Heath and myself, and the findings of [97] fact and conclusions of law, a copy of which I have in my hand, explain exactly the issues before the court and what was decided.

Mr. Crandall: I wish to offer that.

Mr. Knapp: This is an exact copy.

(Testimony of Daniel A. Knapp)

The Referee: I will mark these. This does not seem to be complete. What is the date of it and who was the judge who signed it?

Mr. Crandall: The date when the judgment was affirmed was August 17, 1945.

The Referee: August 17, 1945?

Mr. Crandall: Yes, your Honor.

The Referee: I am going to endorse that on it.

Mr. Bowden: I think that is the date of affirming the judgment on appeal.

Mr. Crandall: That is correct.

The Referee: Now do you have the date of the judgment? It is April something, 1944. I just thought I would complete it.

Mr. Crandall: The motion for a new trial in that matter was set for June 22, so it was probably about 60 days before that.

The Referee: Well, I will take it as it is and mark it.

Mr. Crandall: I will be very glad to supply that information, your Honor. [98]

The Referee: Q. What part of the thousand dollars did you put up, if any, on the homestead exemption? Was that money put up by Mr. Heath or did you put up two-fifths of it?

A. No, I didn't put up any part of that thousand dollars at all. Mr. Heath put that money up and—

Q. How much of it did he get back, if any? What I mean is, at the same time did Mrs. Woodd owe him anything; was there a contra-account?

A. I don't know enough about the transaction to answer that.



(Testimony of Daniel A. Knapp)

Q. I don't recall having heard anything about that homestead in any of the other examinations; I might have but if I did I overlooked it.

A. I know the other day when I went over it with Mrs. Woodd, the matter was brought up and \$1,000 was placed as the money received by her.

Q. What distribution have you received for your two-fifths interest in the rent on the Virginia Street property? Has that been taken care of or have you received anything?

A. I cannot tell you but my understanding from Mrs. Knapp was that she paid out practically every bit of the rent on mortgages and interest.

Q. Then the answer is you have not received anything except the payment on the mortgage and interest?

A. No. [99]

Q. She apparently is taking care of that?

A. Yes, that is true.

The Referee: Are there any other questions, Mr. Bowden?

Mr. Bowden: No, none at all.

Mr. Knapp: Could I be excused?

The Referee: Is there any further need for Mr. Knapp if this matter goes over, or does that conclude his testimony?

Mr. Bowden: I think so.

The Referee: Would you come forward again, Mrs. Woodd, just for a question or so?

MELANIE DOUILLARD WOODD,

having been previously duly sworn, under oath testified as follows:

Direct Examination

The Referee: Just have a seat, please.

Q. What was the transaction in connection with the homestead which you had on Virginia Street property, and what did you do in connection with it?

A. Mr. Heath took me to Judge Vicker's court, I cannot tell you what those proceedings were, but it was about the homestead; I had to keep off of the place, so he gave me a thousand dollars. He gave it to me in \$100 bills. He wanted to put me in the little house in the rear and I would not go there, so we went to court and I got my thousand dollars and Judge Vickers asked me if I was satisfied and [100] I said yes.

Q. Did you get your thousand dollars?

A. Yes, sir.

Q. And you got to stay there also?

A. Yes, sir.

Q. Before he was going to put you in the little house in the rear and he would not have to pay the thousand dollars?

A. Yes, sir, but I would not take it; it was right up against the garage.

Q. So you went to his office later and he gave you 10 \$100 bills?

A. Yes, sir.

Q. So you must have signed a receipt.

A. Yes, sir, I did, yes.

Q. Then the costs and so forth, did you have to pay that, the transcripts and the costs and so forth?

(Testimony of Melanie Douillard Woodd)

A. I kept paying them as they came up and then one time Mrs. Knapp paid some for me and then I sold some of my furniture.

Q. What did you do with the thousand dollars?

A. I lived it up.

Q. When did you get that?

A. Before they executed on me. Just before they sold the Virginia property, by sheriff's sale.

Q. Did you put it in a bank any place? [101]

A. No, not any more. Mr. Clements took some of my money so I didn't put any more in the bank.

The Referee: Any other questions?

Mr. Bowden: Yes, your Honor, just one if I may.

Q. Mrs. Woodd, in June or July of 1939 you had around \$6,800 in the Security-First National Bank at Fifth and Spring Streets?

A. I may have had. I thought it was \$6,400 but it might have been \$6,800.

Q. And you withdrew \$5,100 on June 20, 1939?

A. Yes.

Q. And you put that where?

A. In the Federal Savings.

Q. The Federal Savings & Loan?

A. I guess so.

Q. Then you took it out of there, what did you do with it?

A. I put \$2,000 in the Postal Savings and made a \$2,000 payment on the mortgage.

Q. Did Mr. Heath and Mr. Knapp know you had these funds?      A. No, sir.

Q. What did you do with the \$6,400 you got out of the Vermont Avenue property?

A. I bought Glendale, for \$1,750.



(Testimony of Melanie Douillard Woodd)

Q. That is that sheet you gave us this morning? [102]

A. Yes, it is all there.

Mr. Bowden: That is all.

Mr. Crandall: That is all.

The Referee: That is all. Any other questions or matters?

Mr. Bowden: Nothing further.

The Referee: That apparently is all we have time for. I would like to hear the trustee's summary of this case. The burden, of course, is on the objector usually in this matters of this kind. I have not read this accounting over. I believe I had two accountings, where is the other one?

Mr. Bowden: They are both there. Exhibit 1 and Exhibit 2.

The Referee: Well, I will continue this matter. I would like to get the views of these gentlemen on this evidence. When do you want to put this over to? I assume you are through with the evidence.

Mr. Bowden: Yes, sir.

The Referee: Do you want to have this afternoon to conclude it? We have another matter at 2:00, or I can put it on next week.

Mr. Bowden: I would prefer it next week.

The Referee: All right.

Mr. Bowden: Could we have it on Wednesday?

The Referee: Yes, Wednesday morning at 10:00 o'clock. [103]

Mr. Crandall: That will be agreeable with the bankrupt.

The Referee: All right. April 10, at 10:00 a. m. The witnesses are excused in the matter.

(Court adjourned.) [104]

Melanie Douillard Woodd                      December 12, 1946  
2:00 p. m.

Examination of Security-First National Bank,  
its branches and agents.

The Referee: Are you ready now in the Melanie Douillard Woodd matter?

Mr. Clements: May I associate Mr. Bowden as co-counsel?

The Referee: Yes, yes, sir.

GERTRUDE FINLAY,

having been first duly sworn, on oath testified as follows:

Direct Examination

By Mr. Bowden:

Q. Miss Finlay, are you employed by the Security-First National Bank?                      A. Yes, I am.

Q. At what branch?                      A. Fifth and Spring.

Q. Do you work in the escrow department?

A. Yes, sir.

Q. And pursuant to an order of this court have you brought to court your Escrow File No. 129015 D?

A. Yes, sir.

Q. An escrow between M. L. Hovey and Anna L. Hovey and A. P. Garnier? [105]                      A. Yes, sir.

Q. These are all of the documents that you find in that escrow?                      A. That is right.

Q. Did you make a search for an escrow that you handled between A. P. Garnier and Carol Dumont?

A. Yes, sir, I did.

Q. Have you been able to find that?

A. I find no record of that claim.

(Testimony of Gertrude Finlay)

Q. Have any examinations been made at your other branches?      A. Not that I know of.

Q. Can you do that?

A. Well, we have so many branches I don't know how we would go about it, but the head office might be able to; I will ask Mr. Corbin. Is it the same property?

Q. Yes, the same property. I will give you the legal description for the purpose of the record—Lot 11, Tract 314 in the City of Los Angeles, County of Los Angeles, State of California, and recorded in the Books of Maps, Map 14, pages 122 and 123 of Maps.

Did you handle these matters personally?

A. No, sir.

Q. Who did?

A. Mr. Dohlin. He is on vacation.

Q. And his initials? [106]      A. H. A.

Q. Is he also at the Fifth and Spring Office of the Security-First National Bank?      A. That's right.

Q. Miss Finlay, I notice that in this escrow there is a check in the sum of \$1,200, which apparently is a part of the proceeds of the sale, made payable to Daniel A. Knapp; can you tell us are those payments made by check usually from the bank?

A. Escrow check, yes, sir.

Q. Would it be possible for you to obtain that check?

A. Yes, it would.

Q. And also I assume the \$1,061.94 payable to M. L. Hovey and Anna Hovey was also by check?

A. That is right.

Q. Would you also obtain that check for us, please?

A. Yes, sir.



(Testimony of Gertrude Finlay)

Q. Could you leave this file with the court?

A. No, that is our permanent record. We could have a photostatic copy made of the whole thing but we will have to have that back.

Q. Will you do that, please?

A. Do you want the settlement sheet also?

Q. Yes, the whole file.

For the purpose of the record I am referring to [107] Escrow File 129015 D, Security National Bank—the Security-First National Bank, Fifth and Spring Streets, between M. L. Hovey and Anna L. Hovey and A. P. Garnier. The escrow was opened apparently on January 4, 1946, and provided for the sale of the property, real property, heretofore mentioned, by M. L. Hovey and Anna L. Hovey to A. P. Garnier, the total purchase price of \$3,000, \$2,400 cash in escrow, \$600 encumbrance of record, which encumbrance was a promissory note secured by trust deed executed by M. L. Hovey and Anna L. Hovey and Melanie Douillard Woodd, dated August 2, 1945, installments monthly, commencing September 16, 1945. I don't believe you had had time to look at the safety deposit box.

A. No, we just had a call about a quarter of 2:00.

Q. Will you have a copy of that sent to me, please?

A. Yes, sir.

Q. If you will make me a photostatic copy of the checks, front and back, that will be sufficient; and the originals will be available if we need them?

A. Oh, yes.

The Referee: May I see the file, please?

(The witness hands file to the Referee.)

The Referee: Any other questions from this witness?

(Testimony of Gertrude Finlay)

Mr. Bowden: No other questions.

The Referee: Do you want this to go off calendar?

Mr. Bowden: Yes, your Honor; I might say in regard [108] to the subpoenas for Mrs. Woodd and Alfred Douillard, I talked to the United States Marshal about an hour ago and he advised me he was unable to get into the house and unable to get anyone to come to the door and he could not serve them.

The Referee: The record may show the matter is continued to December 23, at 10:00 a. m. for the purpose of keeping it on the calendar.

(Court adjourned.) [109]

Melanie Douillard Woodd                      December 16, 1946  
2:00 p. m.

The Referee: Melanie Douillard Woodd.

Mr. Bowden: Ready, your Honor. Mr. Knapp, will you take the stand, please?

DANIEL A. KNAPP,

having been first duly sworn, on oath testified as follows:

Mr. Bowden: May we have an order excluding the witnesses at this time, please?

The Referee: Which witnesses?

Mr. Bowden: Dr. Hovey, Mr. Douillard and Mrs. Woodd.

The Referee: What do you think about the bankrupt being excluded from her own proceeding?

Mr. Bowden: Well, I doubt whether she is a party in interest. However, if the Court desires that she remain I have no objection.

(Testimony of Daniel A. Knapp)

The Referee: I believe she has a right to remain at all times. The other two witnesses may step into the Clerk's office and as soon as we are through with this witness we will call you. Dr. Hovey and Mr. Douillard; and Mrs. Woodd may stay.

Mr. Bowden: Mr. Stewart, I don't believe you are the attorney of record for the bankrupt, are you? [110]

Mr. Stewart: Yes, I represent the bankrupt.

By Mr. Bowden:

Q. Mr. Knapp, did you formerly represent Mrs. Woodd?

A. Well, I would like to ask for that question to be a little more explicit. On what matter?

Q. Any matter; any case in court prior to the bankruptcy proceedings here? A. Yes.

Q. And the name of that case?

A. Douillard vs. Woodd.

Q. Did you not also represent her in a probate proceeding? A. No, I did not.

Q. Were you the attorney for the executrix in the Douillard probate proceeding?

A. Together with Mr. Heath.

Q. Who was the executrix in that proceeding?

A. Mrs. Woodd.

Q. Then you did represent her?

A. No, I didn't represent her.

Q. Who did? A. Mr. Heath did.

Q. Yes, then you represented her when a dispute arose over that decree or the will or whatever it was?

A. The will, yes sir. [111]

Q. And there was a judgment obtained against her in that proceeding? A. Yes.



(Testimony of Daniel A. Knapp)

Q. I will try to shorten that as much as I can. I don't care to go over all of the ground. I believe it developed in the prior proceeding in bankruptcy that you had commenced a friendly proceeding against Mrs. Woodd for the payment of your attorney fees?

A. We did on certain date.

Q. And you got a judgment in that proceeding of the sum of \$4,000 or \$4,500?

A. Yes, we got a judgment, I don't know whether it was 4,000 or 4,500; I believe it was \$4,000.

Q. And in pursuance of that judgment you caused a writ of execution to be levied on that property referred to as the Hobart property, property on Hobart and Virginia Avenues?

A. Yes sir.

Q. And that judgment was obtained in the name of your assignee, Dr. Hovey?

A. Dr. Hovey, for collection purposes.

The Referee: Didn't we go into all of that before?

Mr. Bowden: Yes sir; well, I can ascertain it.

Q. Mr. Knapp, do you know what the legal description of that property on Hobart is?

A. No, not at this time— [112]

Q. —the South 108 feet of the Zahn Tract, Los Angeles; does that sound like it?

A. It is the Zahn Tract.

Q. Do you know in whose name that property now stands?

A. I heard about it yesterday for the first time; not yesterday, the day before yesterday.

Q. What did you hear? That Mrs. Woodd is now the legal owner?

A. I heard that a deed had been made to her.

(Testimony of Daniel A. Knapp)

Q. Do you know the circumstances surrounding the making of that deed?      A. I know nothing about it.

Q. Well, Dr. Hovey was holding that property in his name for your benefit with Mr. Heath?

A. He was not only holding it but he had assigned all right and interest to us and to the judgment and to the claim, immediately after the filing of the suit.

Q. That was a written assignment?

A. Yes. I don't like to surrender these assignments except for inspection.

The Referee: Well, there is no question but what he is the agent, and Dr. Hovey has no interest in it, is that correct?      A. That is correct.

Q. By Mr. Bowden: Did you give Dr. Hovey any instructions regarding the deeding of that property to Mrs. Woodd? [113]

The Referee: May I see the assignment?

Mr. Knapp: There are three of them. I will get the one you want—this was the one to Myra C. Knapp and from Myra C. Knapp back to me.

The Referee: (Reading)

“Assignment. In consideration of \$1 and other good and valuable consideration to me in hand paid, receipt of which is hereby acknowledged, I hereby assign, sell and set over to Myra C. Knapp all my rights, title and interest in and to my claim against Melanie Douillard Woodd in the sum of \$2500 as set forth, and in my suit against her in the Superior Court of the State of California, in and for the County of Los Angeles, No. 450821, and to the judgment resulting therein to the extent of said \$2500. Dated April 15, 1940. Signed M. L. Hovey.”

(Testimony of Daniel A. Knapp)

And then another instrument, "Assignment. In consideration of \$1 and other good and valuable consideration to me in hand paid, receipt of which is hereby acknowledged, I hereby sell, assign and set over to Daniel A. Knapp all my rights, title and interest in the claim of M. L. Hovey against Melanie Douillard Woodd as set forth in his suit against her in the Superior Court of the State of California in and for the County of Los Angeles, numbered therein 450821, and to the judgment resulting therein to the extent of \$2500; said M. L. Hovey having heretofore assigned to me the aforesaid interest in his said claim. Dated April 20, 1940. [114] Myra C. Knapp."

By the Referee:

Q. What was the third assignment?

A. That was the other property, generally known as the Glendale property; no, that was the assignment to Mr. Heath.

The Referee: (Reading)

"Assignment. In consideration of \$1 and other good and valuable consideration to me in hand paid, receipt of which is hereby acknowledged, I hereby assign, sell and set over to Fred W. Heath all my right, title and interest in my claim against Melanie Douillard Woodd in the sum of \$4,000, as set forth in my suit against her in the Superior Court of the State of California, in and for the County of Los Angeles, numbered therein, 450821, and to the judgment resulting therein to the extent of \$4,500. Dated April 15, 1940. Signed, M. L. Hovey."

I will return these originals to Mr. Knapp.

Proceed.



(Testimony of Daniel A. Knapp)

The Witness: Pardon me a moment, and for the purpose of verification of the numbers and so forth, I am calling the Court's attention to the complaint.

The Referee: All right.

Q. By Mr. Bowden: You say you learned the day before yesterday for the first time about the property being deeded to Mrs. Woodd?

A. Deeded to anyone. [115]

Q. How did you learn that?

A. I think I had a second-hand call; I think the call came to Mrs. Knapp and then came to me. I don't know just exactly how that call came in. Well, then I made inquiries.

Q. By the Referee: That was the first time you knew Dr. Hovey had assigned it or transferred it to any person?

A. I didn't know there was any assignment or transfer of any kind.

Q. By Mr. Bowden: Do you know who made that call?           A. No, I don't.

Q. Just a message left in your office, was it?

A. It probably was from Dr. Hovey to Mrs. Knapp but I could not verify that, because what I was thinking about was not so much who said it, as the fact. I was astounded.

Q. Now, Mr. Knapp, you referred to the Glendale property; I think we all know what the consists of. That was sold some time this year, wasn't it?

A. Yes, a contract was entered into for the sale the last part of 1945 and the sale was completed on January 12, 1946.

(Testimony of Daniel A. Knapp)

Q. And it was sold to a man named Garnier?

A. Correct.

Q. What was the purchase price of that property?

A. \$3,000.

Q. How much did you receive of the \$3,000?

A. I received \$1200. [116]

Q. Who received the balance?

A. The balance was to the credit of Fred W. Heath or rather to the estate of Fred W. Heath; it has never been distributed yet, for two reasons; one, the inventory in the estate of Fred W. Heath has not been completed and the other reason is there is a claim against that on the part of Dr. Hovey for moneys held in trust by Fred W. Heath for his benefit.

Q. Well, the balance of that \$3,000 was actually paid to Dr. Hovey, was it not?

A. I am sure it was.

Q. By the Referee: Or to the estate of Fred W. Heath?

A. No; not to the estate of Fred W. Heath.

Q. By Mr. Bowden: It was paid directly to Dr. Hovey? A. That is right.

Q. It wasn't—Wasn't that property worth a good deal more than the \$3,000 at that time?

A. My information is to the contrary. I had collected the rent on that property and the renters there said the property was badly infested with termites and it was run-down outside and inside and they refused to buy it under any consideration. I had a real estate agent—I own property about four blocks away from there—and I asked him to investigate and he said it was not worth, in his estimation, over 2500 or \$3,000.

(Testimony of Daniel A. Knapp)

Q. Who arranged the sale of it? [117]

A. I don't know; Dr. Hovey phoned to me and said that Mr. Garnier wanted to buy it and if I remember correctly Mr. Garnier came to the office and talked with me about it.

Q. Do you know who Mr. Garnier is?

A. All I know about him is he is a real estate dealer.

Q. He has been a friend of Mrs. Woodd for about eight years, hasn't he?

A. I never knew anything about that.

Q. Dr. Hovey is still holding this \$1250?

A. \$1200, yes sir.

Q. Is he still holding that?                      A. Yes.

Q. Now there was a trust deed on that property for around what?                      A. \$600.

Q. Who made that trust deed?

A. I cannot tell you that now.

Q. Wasn't it made by Dr. Hovey and his wife and Mrs. Woodd?                      A. I don't know.

Q. You don't have any recollection of that?

A. I have no recollection.

Q. Do you remember the time when they wanted to refinance this property and they borrowed this money and paid off the old loan?

A. You see it is like this: Most of the business in [118] connection with that whole thing up to the time of Mr. Heath's death was done by him, so I would not have any recollection of that phase of the situation.

Q. I think that trust deed was put on after Mr. Heath's death, wasn't it?

A. I don't know that.



(Testimony of Daniel A. Knapp)

Q. When did Mr. Heath die?

A. I think the 7th day of September, 1945.

Q. Mr. Knapp, you say that this property, this Hobart property, was being held by Dr. Hovey for your benefit and now it has been conveyed to Mrs. Woodd; do you want to make any comment about that matter?

A. Most of it would not sound good.

Mr. Bowden: You don't need to.

The Referee: I would like to get Mr. Knapp's explanation or version of it; that might clear the whole matter up.

The Witness: The property was being held for the rental and awaiting a market. It was run-down. The house was in bad shape; the trees were falling around about it and unless someone wanted that property badly we were afraid we could not get what would be desired. Dr. Hovey and I have talked about that situation a number of times. Then came the message day before yesterday that he had sold the property, and if I remember correctly, to Louis Douillard, and that Louis Douillard had sold it to Mrs. Woodd.

Yesterday I went out to Mrs. Woodd's to verify [119] that fact and find out how in the world it all came about and I took Dr. Hovey with me there. And I was simply amazed and astounded to find that any such proceeding as that took place; because Dr. Hovey had testified all the way through that he was holding the property for Mr. Knapp and Mr. Heath and had no interest in it whatsoever.

(Testimony of Daniel A. Knapp)

Q. By the Referee: What explanation did he give you, Mr. Knapp, when you confronted him with the facts?

A. Well, he said he thought, as near as I could get it, that he was selling the trustee's interest. He told Mr. Douillard he was unable to attend to the renting and to the property and he thought a younger man should take over his duties; and I asked him how it happened he took \$500, and his only explanation to me was that he needed the money and he said also at that time that his legs and hips were swelling and he was in a terrible condition physically and mentally and wanted to get out of the picture.

Q. At that time was he holding the property for you and Mr. Heath or just for you?

A. He was holding the property for me and for the estate of Mr. Heath.

Q. On a 50-50 basis?

A. No, the ratio was 5 to 3 in favor of Mr. Heath.

Q. And how was this money divided up on the Garnier property?

A. Normally I would have received \$900 and Mr. Heath [120] \$1600, but Mr. Heath owed a great deal of back rent and he agreed out of that that the back rent should be paid so I got \$300 of it over and above the \$900 and applied it.

Q. Did Dr. Hovey explain to you or give any explanation to you as to why he didn't call you when Mrs. Woodd or Mr. Douillard got in touch with him?

A. Not at all.

(Testimony of Daniel A. Knapp)

Q. Is it a fair question to ask what you said to him?

A. I don't know what I said to him. I had always admired and thought a great deal of Dr. Hovey and I just had a feeling of terrific let-down; I could not hardly talk to him.

Q. This \$500—you say he said he needed money?

A. Yes sir.

Q. And that was his explanation as to why he did that?

A. That is what he said.

Q. Did he say he had that coming to him?

A. He had told me before he felt he was entitled to trustee's fees.

Q. Had an amount ever been expressed?

A. No, no agreement had ever been made upon that.

The Referee: I don't know that we have had any evidence here as to the value of this property. I notice we have a late appraisal in there, but it seems to me the property had a value of near \$10,000.

The Witness: I think there was a bank appraisal on that [121] of \$10,000, but of course there was a trust deed upon it.

The Referee: Yes, paid down to 24 or 2500, but that would make the sale something under \$3,000.

A. Yes sir.

Q. Now, he said he assumed he was only selling his trustee position?

A. That is what he said to me. That is in effect; I would not say he said that in so many words, but that was the thought. He also said he knew he did wrong, that he should have consulted me first.



(Testimony of Daniel A. Knapp)

Q. Apparently Mrs. Woodd was still living in the property, collecting the rents and taking them to Dr. Hovey.

A. That is right. All rents had been applied to the mortgage and in view of the fact she was collecting the rent she was permitted to reside in the property.

Q. When Mrs. Woodd was here she took the position that the property was absolutely hers, that apparently you or no one else had any interest in it; that it was purchased at a fair sale by her nephew and her nephew then made a deed to her, which she didn't intend to record, but merely to hold and then another circumstance arose which prompted the recording of it.

Mr. Knapp: She so stated yesterday.

Q. By the Referee: You were not here at that examination, but that is, in effect, the substance of it.

Mr. Knapp: Mrs. Woodd has, however, at all times from [122] the beginning of this matter been cognizant of the relationship of Mr. Heath, Mr. Knapp and Dr. Hovey, and listened to the testimony at all times and certainly knew what the relationship was there; I don't think she could claim to be an innocent person.

The Referee: The thing that impresses me at this point, Mr. Knapp, is that there was such a gross inadequacy of consideration in that Dr. Hovey sale that I cannot understand it, it does not make sense; especially where he didn't communicate with you.

The Witness: I don't understand it at all.

Q. By Mr. Bowden: Do you know when he made this deal with Mr. Douillard?           A. No, I do not.

(Testimony of Daniel A. Knapp)

Q. I have a photostatic copy of it, Mr. Knapp; it was dated the 11th of September, 1946 and was apparently recorded on the 13th.

A. That was to Mr. Douillard?

Q. Yes.

A. When was the one that Douillard made to Mrs. Woodd.

Q. On the 12th of September, and not recorded until the 18th.

The Referee: It was the intention of the parties not to record such a deed to Mrs. Woodd, that only came about due to unusual circumstances; when the son of the nephew got into some sort of trouble and Mrs. Woodd said she thought she would [123] lose her property. I would like Mr. Knapp to remain when Dr. Hovey is examined.

Q. By Mr. Bowden: Do you remember when Mrs. Woodd came to your office to get some information regarding the objection to her discharge and you made a report, sort of an accounting for her, so she could use it on the hearing?

A. In the bankruptcy matter?

Q. Yes.

A. Oh, she did ask me to help her on that, not as an attorney, but as a friend.

Q. You furnished the figures and so forth?

A. Yes sir.

Q. Did you tell her at that time you were going to sell the Hobart property?

A. No, I did not; not at that time. Now there was a matter that came up, I can't remember when, at which time she was complaining about the conditions and the

(Testimony of Daniel A. Knapp)

repairs that were needed and I said maybe we had better sell it.

Q. Were you angry with her at the time?

A. Oh no, I never have been angry with Mrs. Woodd.

Q. By the Referee: Did you consult her about the Glendale property before it was sold?

A. No, I don't think I ever did. If I did, it would be regarding its value, but I don't recall that.

The Referee: Any other questions.

Mr. Bowden: No, your Honor. I would like to call [124] Dr. Hovey.

The Referee: All right, Mr. Knapp, unless there is something else you want to add.

The Witness: Nothing more, your Honor.

The Referee: I meant to ask one further question, I don't know that it is in the record.

Q. Is it your contention, Mr. Knapp, that Dr. Hovey was still holding that property in trust for you and the estate of Mr. Heath?

The Witness: Yes, indeed, your Honor.

LOUIS ALFRED DOUILLARD,

having been first duly sworn on oath, testified as follows:

By Mr. Bowden:

Q. What is your name?

A. Louis Alfred Douillard.

Q. You are known as Louis Alfred Douillard, Senior?

A. Yes sir.

Q. Where do you live?

A. 5255 Virginia Avenue.

Q. Do you live with your mother?

A. I live with my aunt.



(Testimony of Louis Alfred Douillard)

Q. Mrs. Melanie Woodd? A. That is right.

Q. Now, did you get a deed to that property at 5255  
[125] Virginia Avenue? A. I did.

Q. How long ago?

A. I would say about three months ago.

Q. Where did you get that deed?

A. I got it from Dr. Hovey, sir.

Q. Did you go to see him or did he come to see you?

A. I went to see him.

Q. What was the occasion of your going down there?

A. I figured I could get the place. It was run-down and going to pieces and I didn't see any reason for my fixing it up for someone else; and that is not the only reason.

The Referee: Go ahead.

A. Well, there was a tree there that was going to fall either on one little house or the one next door and that tree had to come out. I talked to Dr. Hovey about it and he didn't seem to be able to take care of things like that, and that was when I approached him about buying it and that was when he agreed to sell it to me.

Q. By Mr. Bowden: Did you discuss it with anyone before you went to see him? A. No.

Q. Did you discuss it with your aunt? A. No.

Q. Not at any time, about buying it?

A. I may have discussed it with her, that I would like [126] to buy it if I could get it.

Q. What other conversation did you have with Dr. Hovey about buying it; other than what you have related? A. Nothing.

(Testimony of Louis Alfred Douillard)

Q. Well, you didn't just go there and say, "I want to buy the house," and make out a check and leave it; there must have been some conversation between you.

A. Not that I remember. I had spoken to him about the first part of the year about the place, but we had not come to any agreement.

Q. Didn't he tell you at that time he could not do anything about the property without consulting Mr. Knapp and Mr. Heath? A. No sir.

Q. Didn't you know at that time that Mr. Knapp and Mr. Heath claimed all of that property?

A. No sir, I did not.

Q. You didn't know anything about your aunt's bankruptcy? A. No.

Q. By the Referee: At the first of the year you went down to see Dr. Hovey?

A. About the first of the year, he called me up and I went down there.

Q. Did you speak to him about the property at that time? A. Yes sir. [127]

Q. Did you discuss the amount? A. No.

Q. Then he gave you the deed the day you went in?

A. I went down two or three months later.

Q. That would be when?

Mr. Bowden: September the 11th.

The Referee: September the 11th. That would be on Wednesday, apparently, and you went in alone, did you?

A. Yes, I went to see him myself.

(Testimony of Louis Alfred Douillard)

Q. Just what was said? Just tell in your own words how you happened to buy the property, fixing the amount you paid him and so forth.

A. I went down there you see to see him and I told him the place was run-down and was he going to be over to do anything about it and he was not capable of doing anything.

Q. He couldn't do anything about it?

A. No sir.

Q. What did you say?

A. I said I would like to buy it if he was able to sell it.

Q. Why did you say you would like to buy it if he was able to sell it? Did you know about Mr. Knapp and Mr. Heath?

A. No sir, I didn't at that time.

Q. You knew how Dr. Hovey happened to have the property?

A. Well, I knew my aunt had had trouble; that suits had been going on for years, but I had been away. [128]

Q. Then what else did you talk about?

A. That is about all.

Q. You have not come to any consideration yet.

A. I said I would get the papers and come down and he said his wife would have to sign the papers too.

Q. What was said about the money; what it would cost?

A. Oh, he said he would sell it for \$500.

Q. That is, he would give you complete title to it for \$500?

A. Yes sir.

Q. And you would not go in just as a trustee, you would own it, was that it?

A. Yes sir.

Q. Did he say anything about you stepping into his shoes as trustee?

A. No sir.



(Testimony of Louis Alfred Douillard)

Q. Then you went back later, did you give him a check that day?

A. I went down and got him and then I had to take him over to have his wife sign it.

Q. Then you gave him a check?

A. After we went to—

Q. After they signed it? A. Yes sir.

Q. Then what is the date of the deed, Mr. Bowden, from the witness to Mrs. Woodd? [129]

Mr. Bowden: September the 12th, the next day.

Q. By the Referee: What was the occasion the next day for making out a deed to this property which you had just bought, to your aunt?

A. Well, I figured in case something happened to me I would like for her to have it; because something could happen to me. I have two children and they are taken care of by my insurance.

Q. Did you tell her at the time?

A. I didn't tell her until I had the paper made out.

Q. Where was the deed made out from you to her?

A. A man on Vermont Avenue.

Q. Not at the same place where the other one was made out? A. No sir.

Q. Did you give her the deed? A. Yes sir.

Q. Do you know why she happened to record it?

A. Yes.

Q. What were the circumstances?

A. My son got into a little trouble with the juvenile authorities.

Q. It is not my desire to go into that.

A. Well, that was what caused it.

(Testimony of Louis Alfred Douillard)

Q. She said something when she was here, that she might lose the property or something, so she recorded the deed. How [130] would she lose the property because your son got into trouble?

A. She was afraid that they might sue me or something and ask me if I owned any property.

Q. There was no money passing then from Mrs. Woodd to you? A. No sir, I just gave it to her.

Q. And this check you gave of \$500 was on your bank account? A. Yes sir.

Q. And the deposits in that account represented your earnings? A. Yes sir.

Q. None of Mrs. Woodd's money had gone into that account? A. No sir, not a dime.

Q. By Mr. Bowden: Where is your account?

A. At the Bank of America, Melrose and La Brea.

Q. By the Referee: Do you recall approximately what amount you had there?

A. I would say in my savings, around \$1800.

Q. Was it a savings or checking account?

A. I have a savings and a checking account both, I drew it from the savings.

Q. The check was on the savings account?

A. Yes sir.

The Referee: Any other questions? [131]

Q. By Mr. Bowden: Who was the check made to?

A. Dr. Hovey and his wife.

Q. For an even \$500? A. Yes.

Q. Do you know Alfred Price McNair?

The Referee: Is he the Notary?

Mr. Bowden: Yes sir.

(Testimony of Louis Alfred Douillard)

Q. By the Referee: Where did Dr. Hovey make out the deed to you?

A. We had that made out in Glendale, on Brand Boulevard, by the Notary Public.

Q. By Mr. Bowden: And that was Mr. McNair?

A. You mean make the papers out before it was notarized?

Q. Yes.

A. A friend of mine, Mrs. Murphy, made it out.

Q. Why did you go to her?

A. Because she has a typewriter.

Q. Did you tell her what to put in the deed?

A. Yes, I had the papers.

Q. Where did you get the description?

A. I had the description from the tax receipt.

Q. By the Referee: Mrs. Woodd gave you those, did she?

A. No. Dr. Hovey gave me the tax receipts.

Q. By Mr. Bowden: Do you remember the Glendale property your aunt used to own?

A. Yes, I do. [132]

Q. That was deeded to you at one time, was it not?

A. Yes, it was.

Q. How much did you pay her for it?

A. I don't remember.

Q. How long ago was it?

A. I don't remember that.

Q. She sold it to you for \$200, didn't she?

A. Possibly, I don't remember.

Q. And then bought it back again?

A. Possibly, I don't remember.



(Testimony of Louis Alfred Douillard)

Q. What was the reason for that transaction? Your aunt put the property in your name for \$200 and then you deeded it back to her later.

A. I don't remember.

The Referee: I don't remember that, Mr. Bowden.

Mr. Bowden: That came out in the former testimony. Mrs. Woodd testified she sold the property to this man, her nephew, for \$200 and then later on either she or he were dissatisfied with it and he deeded it back to her for \$200.

Q. By the Referee: And she gave him the \$200 back?

Mr. Bowden: That is what she said.

The Referee: That was after the judgment on the property or before? A. After the judgment.

Q. By the Referee: Just tell us about the circumstances surrounding that. Apparently you bought some Glendale property [133] from Mrs. Woodd. What were the circumstances surrounding that? How did you happen to do that?

A. I don't remember that, your Honor.

Q. Did you have title to some Glendale that she formerly owned? A. I believe I did at one time.

Q. Do you know how much you gave for it?

A. I don't remember.

Q. Do you know what happened to it?

A. No, I don't.

Q. Do you still have it? A. No sir.

Q. You know you don't still have it. Do you know to whom it was transferred?

A. I don't remember the circumstances of the case but I believe I did sign it back to my aunt.

(Testimony of Louis Alfred Douillard)

Q. Do you know how much she gave you for it?

A. No sir, I don't remember.

Q. Did she give you anything?

A. I could not say but I believe she did.

Q. At this time you are more or less hazy on all of the details?

A. Yes, I am. I have been told a lot of things since then.

The Referee: Any more questions?

Q. By Mr. Bowden: Were you present when Dr. and Mrs. Hovey [134] signed the deed to this Hobart property?

A. When they signed the deed?

Q. Yes. A. When he signed it to me, yes.

Q. Who was present when you signed the deed to your aunt?

A. No one.

Q. What Notary was it?

A. I don't remember. It was over on Vermont Avenue.

Q. You went there alone?

A. I just drove over there alone, yes sir.

Q. Who was the Notary?

A. I don't remember. It was by the Pantages Estate.

Q. W. W. Robinson, is he a real estate man?

A. He is a Notary Public.

Q. How did you happen to go there?

A. I was looking for a Notary and just stopped there.

Q. Why didn't you have the same Notary that Dr. Hovey used?

A. Because I had not had the paper made out at the same time.

(Testimony of Louis Alfred Douillard)

Q. Did you make the paper out that night or the next morning?

A. I think it was the next day, the next day or so.

Q. Who made out the second deed?

A. I had Mrs. Murphy make that when—I think Mrs.  
[135] Murphy made that one out for me too.

Q. Who gave her the instructions? A. I did.

Q. No one else? A. No sir.

Q. Where does she live?

A. 813 North Sycamore Avenue.

Q. Is she any relation of yours?

A. No sir, a good friend of mine for years.

Q. Is she in the real estate business?

A. No sir.

Q. And never has been? A. No sir.

Q. Your aunt was in the real estate business for quite awhile, wasn't she?

A. Not that I know of. I know she was taking it up but I don't believe she was ever in the real estate business.

Q. Who was present when Dr. and Mrs. Hovey signed the deed besides yourself? A. No one.

Q. Dr. and Mrs. Hovey, yourself and the Notary Public? A. Yes sir.

Q. What was your reason for going to Glendale?

A. Because I had to pick up Mrs. Hovey, she lives out there.

Q. By the Referee: When did you go into the Army? [136] A. The Navy, sir.

Q. Yes, the Navy. A. In 1942.

Q. Did Mrs. Woodd give you a present of a Plymouth automobile? A. Yes sir, she did.



(Testimony of Louis Alfred Douillard)

Q. When did you dispose of it?

A. Just before I went into the Service.

Q. How much did you get for it?

A. I think it was \$350.

Q. Did you put that money in the bank?

A. Yes sir.

Q. In this same account?                      A. Yes sir.

Q. And later when you came out did you buy a car?

A. I did.

Q. What kind of a car?                      A. A DeSoto.

Q. How much did you pay for it?

A. I paid \$1200 for it.

Q. This \$350, did you give it to Mrs. Woodd when you sold the car?                      A. I did not.

Q. That was money you either have spent or still have. You probably have spent that money, haven't you?

A. No sir, I still have it in the bank. [137]

The Referee: I just thought I might be able to find in this other transcript the reference to the \$200. Is that in the record?

Mr. Bowden: I am not sure; all the transcript was not written up; it might be in Mrs. Woodd's testimony.

Q. By the Referee: Have you ever discussed with Mrs. Woodd when you came back, when she had lost everything and didn't have anything except a place to stay, did you ever talk to her about giving her the \$350 you received from the automobile?

A. No sir, I never brought it up.

Q. And she never mentioned it?

A. No sir. I give her money to help her out off and on.

(Testimony of Louis Alfred Douillard)

Q. You have been living with her how long?

A. Ever since I got out of the Service.

Q. How long is that?

A. Approximately a year.

Q. You have been living in the property which was owned by Dr. Hovey?      A. Yes sir.

Q. Were you paying any rent for your quarters?

A. Yes sir, I gave her \$20 a week for the room, to help her out.

Q. You pay that every week, do you?

A. Oh yes, sir. [138]

Q. In cash or check?

A. Just cash, when I get my check.

Q. When did you make your last payment?

A. Last Thursday.

Q. So you have been taking care of your expense as far as that goes?      A. Yes.

Q. And is that, in your opinion, a fair rental for whatever that—

A. Yes sir, and I take care of the utilities, too.

Q. You pay the utilities for the whole house or just half?      A. Just our side.

Q. And \$20 a week?      A. Yes sir.

The Referee: There are other transcripts here. I don't know—we might just take a moment here.

Mr. Bowden: The testimony regarding the sale of the Glendale property to the witness is found on page 26. The testimony regarding the deeding of it back is on page 27, Mrs. Woodd's testimony.

(Testimony of Louis Alfred Douillard)

The Referee: I will just read this to you. This is an examination that took place on September 17, 1945.

"By Mr. Austin:

Q. But you did collect the rent on that for quite a while after it was sold to the Hovey judgment? [138]

"A. When it was in the Douillard's name I sold it to my nephew; I didn't know you couldn't sell a piece of property when there was a judgment on it, but I did.

"Q. How much did your nephew give you for it?

"A. About \$200.

"Q. Was it by check or cash? "A. Cash.

"Q. Where did you put it? "A. I used it.

"O. How long ago was that?

"A. In 1941, I think.

"Q. Then you sold it to him when there was a judgment on it? "A. Yes sir.

"Q. What judgment was on it?

"A. Hovey's judgment.

"Q. He gave you \$200? "A. About that.

"Q. Then what happened next?

"A. I guess Mr. Heath must have had that set aside; I don't know.

"Q. Did they take it up with you? Did they talk to you about it?

"A. I don't remember. Mr. Knapp, I think, can tell you.

"Q. Your nephew then transferred it back to you, [140] didn't he? "A. Yes.

"Q. What was the occasion for that?

"A. The mortgage came due and he went to war.

"Q. What did you give him for it when he transferred it back to you?



(Testimony of Louis Alfred Douillard)

“A. I gave him a couple of hundred dollars back when he transferred it back to me.”

Well, that is what she testified at that time. Now I want to see something in this other—no, we didn’t have the transcript written up of Mrs. Woodd’s testimony. Any further questions?

Mr. Bowden: That is all. But I would like to examine Dr. Hovey now.

The Referee: All right, but I think we will take a short recess first.

(Whereupon a recess was taken.)

The Referee: Dr. Hovey, will you come forward, please?

MILES L. HOVEY,

being first duly sworn, testified on his oath, as follows:

By Mr. Bowden:

Q. What is your full name, please?

A. Miles L. Hovey.

Q. Where do you live? [141]

A. 1675 West Washington.

Q. Where is your place of business?

A. At 2320 West 11th Street.

Q. Do you have a telephone?

A. The office telephone is FAirfax 3923.

Q. Is that a prefix? A. Yes.

Q. What is your home telephone?

A. That is PArkway 0229.

Q. Do you know Mrs. Woodd? A. Yes sir

(Testimony of Miles L. Hovey)

Q. How long have you known her?

A. A number of years, I don't know exactly.

Q. What is your business or occupation?

A. I am a chiropractor.

Q. Do you know Mrs. Woodd's nephew, Louis Alfred Douillard, Sr., the gentleman who is sitting back there?

A. Yes sir.

Q. How long have you known him?

A. About a year.

Q. Did you know him before he went into the Army?

A. No.

Q. Do you know Mr. Daniel A. Knapp?

A. Yes.

Q. How long have you known him?

A. I don't know; 10 years or more. [142]

Q. Doctor, I think you testified once before in this proceeding that you sued for Mr. Knapp and Mr. Heath against Mrs. Woodd and recovered a judgment and had the Glendale property and the Hobart property executed on in pursuance of that judgment?

A. Yes sir.

Q. Do you know who owns the Hobart property now?

A. No, I don't.

Q. That is at Virginia Avenue and Hobart.

A. That is Douillard—I don't know.

Q. And you and Mrs. Hovey made a deed to Louis Alfred Douillard, Sr., on the 11th day of September, 1946, did you not?

A. September, that is right.

Q. How did you happen to make the deed to him?

A. Well, I felt incapable of taking care of the property any more and he lives there and I thought he could handle it better.

(Testimony of Miles L. Hovey)

Q. How much did he pay you for it?

A. He paid me \$500.

Q. How much was the property worth in September?

A. I don't know.

Q. Did you make any inquiries as to the value of it prior to the sale?           A. No.

Q. Did you ask him to buy it or did he ask you? [143]

A. I asked him—we talked it over together, but I don't know who first spoke of it.

Q. When did you first discuss selling the property to him?

A. I talked to him about it, about taking care of the place in February, 1946.

Q. When did you talk about selling it to him first?

A. It must have been in August some time.

Q. Was that before or after you testified here?

A. After.

Q. You talked to him about it, about taking it over and buying it?

A. About buying my interest in it.

Q. You remember testifying here that you owned that property and claimed to be the owner of it?

A. Yes sir.

Q. You were the owner of it, were you not?

A. That ownership—I still don't know whether that is a true deed to me or an interest in trust of the Heath Estate that I was selling, or the actual title to the property.

Q. Haven't you ever discussed it with Mr. Knapp?

A. No, very little.

Q. Well, you have talked to him about it, haven't you?

A. I talked to Mr. Heath.



(Testimony of Miles L. Hovey)

Q. Well, after Mr. Heath's death, you talked to him  
[144] about it, didn't you? A. Yes sir, I did.

Q. And you talked to him about this sale, didn't you?

A. No, I never did talk to him about it.

Q. Did you ever tell him you had sold it?

A. No.

Q. Why didn't you?

A. I don't know why I didn't.

Q. Do you remember testifying here to the effect that the title to the property was in your name and was to be held by you until Mr. Knapp's and Mr. Heath's fees was finally settled and they were to get part of the proceeds and you were to get part of the proceeds too?

A. Yes sir.

Q. And yet you went out and sold this property without consulting Mr. Knapp? A. Yes, I did.

Q. Why did you? A. I have no idea.

Q. By the Referee: Was it to defraud him out of any money? A. Oh, no.

Q. Did you give him the \$500?

A. No, I didn't.

Q. When the Glendale property was sold did you get any money out of that? A. Yes sir. [145]

Q. How much?

A. I don't remember exactly; I believe around a thousand dollars.

Q. Is that claimed by the estate of Fred W. Heath?

A. That was out of that part.

Q. I see—do they make a claim for it now?

A. Yes, I believe so.

Q. But you have not paid it to them? A. No.

(Testimony of Miles L. Hovey)

The Referee: It looks as though you got whatever you got your hands on in this deal. Let's go into this a little further.

Q. By Mr. Bowden: Have you still got the money you received out of the Glendale property?

A. No.

Q. What did you do with it?

A. I used it in my living and in my business.

Q. How did you regard it or record it on your books of account?

A. Why, it is just the amount that was due to me from Mr. Heath.

Q. What was that?

A. That was for the sum of money he had owed me for a number of years.

Q. How long?

A. I believe he owed me that about 12 years. [146]

Q. By the Referee: That paid your account, did it, and balanced you up with him?

A. The 1200 did, yes sir.

Q. By Mr. Bowden: What portion of the money was allowed to the fees or expenses in the suit of Hovey vs. Woodd?

A. I don't know. Is that the \$1200, the fee?

Mr. Bowden: I don't know. I am asking you.

A. I don't know.

The Referee: Apparently whatever Mr. Heath, with whom the witness had dealings, owed Dr. Hovey was paid. The account was balanced up by the sale on January 12, 1946 to Mr. Garnier of the Glendale property. That is behind us.

(Testimony of Miles L. Hovey)

Mr. Bowden: I want to know if the witness allowed any portion of that \$1000 to the Knapp—Woodd case, in which he testified heretofore that he was going to get paid out of the proceeds of this property.

The Witness: No.

Q. By Mr. Bowden: None of it? A. No.

Q. Had you received anything on account of your services in that Knapp vs. Woodd case?

A. That thousand dollars was owing to me by Mr. Heath and the \$200 was the part I was to receive for my services in that case.

Q. That is the case in which you were the assignee and sued Mrs. Woodd? [147]

A. That is the way I understand it.

Q. By the Referee: Then that paid it up?

A. Yes sir.

Q. By Mr. Bowden: Then Mr. Knapp didn't owe you anything at that time? A. I don't know.

We had made no arrangements at all about that.

Q. Who arranged for the sale of the Glendale property?

A. Mr. Knapp and I and a real estate man.

Q. Who was the real estate man? A. Garnier.

Q. And he is the one who purchased it?

A. Yes.

Q. How did you happen to meet Mr. Garnier?

A. I don't recall. I believe he came to me to get a splinter out of his finger or something.

Q. Didn't he say Mrs. Woodd had sent him?

A. I don't remember. I believe he knew her and she sent him to me.



(Testimony of Miles L. Hovey)

Q. What was the sale price of the Glendale property?

A. I don't recall, exactly, I think \$3,000.

Q. It was worth a good deal more than that, wasn't it?

A. I don't think so.

Q. Did you investigate the value of it?

A. Yes sir.

Q. Who set the price on this property in this sale? [148]

A. Mr. Garnier made an offer for it.

Q. To you?

A. To me, and I don't know whether he talked to Mr. Knapp directly or whether I talked to Mr. Knapp, I don't recall.

Q. By the Referee: You say you don't know whether he told Mr. Knapp or you told him?

A. I don't recall.

Q. Do you think you did tell Mr. Knapp or you didn't?

A. Oh yes, I think so.

Q. What did Mr. Knapp say about the deal?

A. I don't recall.

Q. Did he reject it or approve it?

A. He approved it.

Q. That is the \$500 sale to Mr. Douillard?

A. No; I didn't talk to him about that at all.

Q. Oh, you are talking about the Glendale sale?

A. Yes.

Q. By Mr. Bowden: Did you talk to Mrs. Woodd before the Glendale property was sold?

A. No.

Q. Or after it was sold?

A. Not regarding the property.

Q. Did you pay her any money?

A. I did not; no.

(Testimony of Miles L. Hovey)

Q. Tell us, doctor, about the sale to Mr. Douillard of [149] the Hobart property. Was a discussion had regarding the sales price of it?

A. We were discussing the run-down condition of the place and I thought he could take care of it and handle the interest, the trust interest, better than I could; I was not capable of taking care of it either mentally or physically any more.

Q. By Mr. Bowden: You mean you said you were turning it over to him to hold for Mr. Knapp?

A. Until whatever settlement they would make.

The Referee: Settlement of what property?

A. The Virginia Avenue. Mr. Knapp not having talked to me or me to him in regard to it—I felt the place was deteriorating and it should be in someone's hands who could look after it.

Q. What portion of the property did you think should go to Mr. Knapp and what portion to Mrs. Woodd?

A. I didn't think Mrs. Woodd had any interest in it.

Q. Then who had the interest in it?

A. The only interest was in Mr. Heath's estate and Mr. Knapp.

Q. Did you communicate with anyone representing Mr. Heath's estate in connection with the sale?

A. No.

Q. When did Mr. Knapp, as far as you know, find out that you had sold the property? [150]

A. Well, he called me and asked if it had been sold on last Saturday.

Q. What did you tell him?

A. I told him yes, it had.

(Testimony of Miles L. Hovey)

Q. What else did you say?

A. He wanted to know if any money had changed hands and I think I said I received \$500 in all.

Q. What did he say?

A. Well, he said I had no right to sell it.

The Referee: All right, Mr. Bowden.

Q. By Mr. Bowden: Is that all he said? What did you say to him after he told you you had no right to sell it?

A. Well, it sounded reasonable and I admitted I should have talked to him about it but I had failed to do so.

Q. Why did you sell it for \$500? Don't you know that property is worth close to \$10,000?

A. It was not the sale of the property—Yes, I guess it is a legal deed; I don't know.

Q. Didn't you go to a real estate office and have the deed drawn? This real estate office, did you go to it?

A. We had the deed notarized.

Q. Where? A. Out on Glendale Avenue.

Q. Why did you go out there?

A. That is close to where I used to live.

Q. Well, you live on Washington. [151]

A. Yes sir.

Q. Why did you go to Glendale?

A. Because I used to live over there.

Q. And you took Mrs. Hovey over there, did you?

A. Yes.

Q. By the Referee: Did you take Mrs. Woodd?

A. No.



(Testimony of Miles L. Hovey)

Q. Did you tell Mr. Douillard you were selling the property to him subject to Mr. Knapp's rights and subject to the rights of the Heath estate?

A. He knew it.

Q. No, what did you tell him?

A. I don't remember telling him in so many words that it was subject to their legal claim but I thought he knew that.

Q. Why should he know about their interest in it? Did you tell him, in effect, that they owned the property and that you were just holding it for them?

A. I don't recall the specific instance of saying that. I took it for granted he would know that.

Q. How much is—If you did have a discussion on that or if he did ask you what the interest of the Heath estate and the interest of Mr. Knapp was in it, what would you have told him; how much is their interest in it?

A. I don't know. They had a fee that they were holding the property for, and I don't know. I never did know [152] just what it was. I think it is a division of five-eighths by three-eighths or something of that kind.

The Referee: Three-fifths, I think it was. Maybe it was five-eighths. Well, if he had paid that amount then there would not have been any question about this, If he had paid that amount to them? If they had gotten their money out of it, there would not have been any question about their interest in it; is that what you mean to imply?

A. Yes sir.

Q. But you didn't know how much they had coming?

A. No, I didn't.

(Testimony of Miles L. Hovey)

Q. Did you know approximately; how many thousands of dollars?

A. The original suit for fees I believe was something like \$7,000 but they reduced it to something like \$4500.

Q. Then on the Glendale property, they got something over \$2,000?

A. Yes, then they should have some balance due.

Q. Was it your instructions that if they were paid that then you could release the property? Is that what you were referring to?

A. The property is subject to their fee.

Q. I know, but if you had the exact amount of their fee figured out, then was it your understanding that you could have released the property if that fee was paid?

A. Yes sir. [153]

Q. If Mr. Douillard had come in with that exact amount of money to have paid them, then there would not have been any sort of question here?

A. Not that I know of. That is right.

The Referee: Any other questions?

Q. By Mr. Bowden: How did Mr. Douillard pay the \$500 to you? A. He gave me a check for \$500.

Q. Do you know what bank it was on?

A. No, I don't think so.

Q. What did you do with that money?

A. I put it in my bank account.

Q. Do you still have it there?

A. No, I don't. I have some of it.

(Testimony of Miles L. Hovey)

Q. By the Referee: Well, Dr. Hovey, didn't you imagine that some time or other Mr. Knapp would have found out about this?

A. Yes, I was in a bad mental and physical condition at that time and I didn't think very clearly about those things until a short time ago it began to worry me a little. But at the time the chief thing I had in my mind was that I must get someone more responsible than myself to take care of that place; I felt my inability to do it and I was unable to do anything about it, as a matter of fact, I was not able to take care of my own work at all.

Q. If you are correct in your theory that you were [154] only transferring your trusteeship there, why did you take any money from Mr. Douillard? He was only assuming a duty, work to be performed.

A. I thought I was entitled to about that much for the care and worry and frequent calls and one thing and another that had interrupted my business and given me a great deal of mental distress.

Q. All of that had been settled and you had received \$200 to pay you for your trustee work; you have not been called to court since then, have you, since January 1946?

A. That was on the Glendale property.

Q. How much were you to get out of the other property, the one we are talking about now?

A. There had nothing been said definitely.

Q. Have you ever made a bill for it?

A. No. I should have talked to Mr. Knapp about it, I realize that now, but I had made no arrangements with him about the place since Mr. Heath's death.



(Testimony of Miles L. Hovey)

Q. By Mr. Bowden: Mrs. Woodd has been living in that property ever since you have had it?

A. Yes.

Q. How much rent have you collected?

A. The total rent, I don't recall exactly, but I believe her apartment was 20 or \$25 and the other places, I don't remember exactly.

Q. She didn't pay you any money though for living there, [155] did she?

A. She paid—no, I don't remember that she paid me. She did the collecting and the payments on the mortgage for me.

Q. Did her nephew, Mr. Douillard, pay you any rent for living there? A. No.

Q. By the Referee: What do you mean by \$25 for her apartment?

A. I think that was about the value of it.

Q. You were not asked the value, you were asked what was collected.

A. I don't recall exactly what the rents were.

Q. Did you collect any rent on their apartment?

A. No, not that I remember.

Q. By Mr. Bowden: Did she bring the money to you from the collections?

A. As a rule. Sometimes I asked her to take it to the bank instead of bringing it to me.

Q. That arrangement went on for a long time, nearly two years? A. Since Mr. Heath's death.

Q. And you don't know how much rent you collected out there?

A. No, I don't. It just covers the payments on the mortgage. [156]

(Testimony of Miles L. Hovey)

Q. When she would bring it to you what would you do with it?

A. I would usually write a check and send it in to the bank on the payment.

Q. By the Referee: How much are the payments on the mortgage?

A. They were around \$35, I believe.

Q. A month? A. Yes sir.

Q. By Mr. Bowden: Well, you would give Mrs. Woodd a check and she would go up and make that payment, wouldn't she; you didn't send it direct?

A. I sometimes sent it direct.

Q. But when she came in with the money you would give her a check and she would go pay the payment, that was the usual procedure?

Q. By the Referee: She would collect the rent and come to your office with it and you would make a check for the payment, \$35, and she would take it to the bank?

A. Or I would mail it.

Q. By Mr. Bowden: Do you have a record of what she brought to you every month?

A. I think I have.

Q. As a matter of fact, doctor, she never did pay you any more than sufficient to pay the mortgage payments did she, it was never higher or lower, it was always the same [157] amount, wasn't it?

A. Yes sir, the rent has always been the same price.

Q. By the Referee: How were the taxes paid?

A. The taxes were paid the same way; I paid the taxes and occasionally Mrs. Knapp paid the taxes.

Q. You mean you would advance the money yourself?

A. Yes, to pay the taxes.

(Testimony of Miles L. Hovey)

Q. Just a minute. I don't believe you advanced any money yourself.

A. No, the amount of the taxes has always been accumulated. There was a small amount. The place has always just paid its way.

Q. You didn't accumulate it, did you? Mrs. Woodd would accumulate it then she would bring the money in to you and you would write a check?

A. Mrs. Knapp would draw the check.

Q. You mean after Mr. Heath's death?

A. I believe the taxes was brought to me once that way; I think that is right.

Q. The amount of money was brought in for the taxes by Mrs. Woodd? A. Yes.

Q. Then you sent the check? A. Yes sir.

Q. By Mr. Bowden: When were the last taxes paid?

A. The last taxes that I paid? [158]

Q. Any taxes. The last ones that were paid on that property.

A. I don't remember, I think that that is not long ago.

Q. Who has the tax bill?

A. I got the tax bills.

Q. The last one? A. Yes.

Q. Did you pay that?

A. No, I think I sent that to Douillard to pay.

Q. And the one before that you paid?

A. I paid the one before that.

Q. Where are your old tax bills now?

A. I have them at home.



(Testimony of Miles L. Hovey)

Q. Can you think of any other conversation you had with Mr. Douillard when you made this deed, other than what you have told us?

A. There was one occasion on which we were talking about the lawn and the trees; the trees fell down in a windstorm and were condemnifying the house and he thought they should be removed and I told him if I was physically able I would do it myself, but I don't know what he has done.

Q. Do you contend now that you were tricked into giving that deed to Mr. Douillard?

A. I don't think so.

Q. Don't you know you gave him a grant deed that conveyed to him all of your interest in the property for \$500? [159]

A. Well, I gave him a deed as it is of record there.

Q. You knew what you were signing when you signed that deed, didn't you? A. Yes.

Q. It was properly made up, was it not?

A. Yes, I think so.

Q. Did you ask any questions about it when it was made up and signed before the Notary?

A. No, I was anxious to get out.

Q. Well, you read the deed after it was made up, didn't you? A. Yes, I read it.

Q. Then why do you say you were conveying some trustee interest?

A. Well, it was in my name that way and they knew that as well as I did; better maybe.

Q. How did Mr. Douillard know that? You said he knew that; how do you know he did?

A. Well, I don't know, I just considered that he knew about it.

(Testimony of Miles L. Hovey)

Q. You thought because he was Mrs. Woodd's nephew and lived there he should know all about it?

A. Well, he lived there and I assumed he knew.

Q. Mrs. Woodd sent him down there to you, didn't she?

A. I called him to come down because he is the only person I knew who could do some cleaning on the roof and the pipes. [160]

Q. By the Referee: How did you know there was anything wrong with the roof and the pipes, did Mrs. Woodd tell you?

A. No; that was the house where I lived.

Q. And that was what brought the subject up?

A. Yes sir, the maintenance of the place, because I was protesting that I had to pay for the cleaning on the house that I paid rent on; but I had to pay it or let it go.

Q. That was the property you lived in?

A. Yes sir, and then we got to talking about the maintenance of the other place.

Q. Did you tell him you had \$500 of trustee fees you wanted paid and that is why you fixed the price of \$500?

A. No.

Q. Did you tell him anything about the trustee fees that you felt you should get?

A. I don't recall talking to him about the trustee fee at that time; that was in February, but later on he felt I would be entitled to take at least \$500 for the care—

Q. Mr. Douillard told you that? A. Yes sir.

Q. He brought up the subject of the \$500? You said Mr. Douillard said he felt you were entitled to \$500?

A. I believe it was him who said he thought I was entitled to a reasonable fee. I think I mentioned the \$500.

(Testimony of Miles L. Hovey)

Q. What did he say to that?

A. He said of course he thought I was entitled to that [161] or more.

Q. Then he gave you a check for \$500?

A. Not at that time.

Q. How long after?

A. Oh, a month or two.

Q. Then, so at the first conversation, it was that you said you thought before you transferred the property you were entitled to a \$500 trustee fee?

A. On that place, yes sir.

Q. Then about a month after that he brought the \$500 check in to you?

A. It was some time the 1st of September.

The Referee: I see. After that then he brought the \$500 in to you? A. Yes sir.

Q. And you signed the deed?

A. That is right.

Q. So from that you are of the opinion that he must have known you were only transferring your trustee position? A. That is what I thought.

Q. This other arrangement which you had with Mr. Heath and Mr. Knapp in connection with the property and their amount that they were to receive, that was all oral, was it? A. That is right.

Q. None of it was in a written contract?

A. That is right. [162]

The Referee: Any other questions?

Mr. Bowden. That is all.

The Referee: Now, Dr. Hovey, do you have anything else to say about this matter? Any further explanation?



(Testimony of Miles L. Hovey)

tion or anything? The Court is anxious to get the full picture if that is possible.

Q. Well, I tell you: The case has been a source of extreme worry and distress to me from the first. I am a chiropractor, not a real estate man, and I accepted the assignment from Mr. Heath because of our many years of friendship and other business deals together, and I did all my business with Mr. Heath and through him and felt a considerable personal loss and somewhat at mental loose ends when he died. And I somehow didn't feel the same freedom of expression with Mr. Knapp; but I should have gone in and talked with him, I feel now.

I had somewhat had a physical breakdown in August and did a lot of things that was rather astounding to find myself doing mentally, and I was very anxious to get the responsibility of everything off my shoulders that I could, with the sole exception of my own work, which was burdensome enough.

The Referee: Well, in the first presentation of this case, you know all of the feeling—you might say—in this case. A. Yes. [163]

The Referee: The creditors were very insistent in their position, that this property in your name was merely being held by you for Mrs. Woodd, possibly there was some additional interest that Mr. Knapp or Mr. Heath had in it, but not the whole property, and they prophesied in their presentation of the matter that it would be only a few weeks after the bankruptcy was completed that this property would go back to Mrs. Woodd. I didn't agree with that theory at that time.

The property didn't go back to her direct as far as anyone could tell on the record; it went to the nephew

(Testimony of Miles L. Hovey)

and then it was only through a very unusual situation that the deed to Mrs. Woodd was recorded; it seems that the son of the nephew got into some trouble and she and he thought there might be a judgment against him and it might affect Mrs. Woodd's property, so she recorded the deed, taking it out of his name.

That is just what the creditors prophesied in this matter; that as soon as the bankruptcy was over this property would go back into Mrs. Woodd's name; and that is where it is now. You, yourself, admit it would have gone there, if she or her nephew had been able to come in and pay you the amount of Mr. Heath's and Mr. Knapp's balance.

The Witness: Well, as to that I would not know; that is up to the attorneys and their willingness to settle their fee. I don't know what their fee was, in fact, I don't know that the litigation is yet concluded; I don't know. [164]

The Referee: What litigation do you refer to that is not completed?

The Witness: I don't know, but there was other legal claims against Mrs. Woodd's property.

The Referee: By whom?

The Witness: By Mr. Knapp and Mr. Heath.

The Referee: Of what sort?

The Witness: I think they handled some other notes.

Q. By the Referee: How much was that?

A. I don't know. I don't know what that was.

Mr. Bowden: That is all.

The Referee: I believe this matter should be referred by the trustee under Section 29 to the United States Attorney. Let him take this matter over from here on.

(Court adjourned.) [165]

Melanie Douillard Woodd                      December 23, 1946

First Meeting of Creditors:

Examination of Witnesses

The Referee: Melanie Douillard Woodd.

Mr. Austin: Ready, your Honor.

The Referee: Are there any claims in this reopened estate?

Mr. Austin: Yes, your Honor; the claims of the Douillards and also of Puissegur.

The Referee: Whom do you desire for trustee?

Mr. Austin: Mr. Helmick, your Honor.

The Referee: Are there any objections to John M. Helmick as trustee? Of course he has not acted as trustee before in here—he can get his bond in within five days.

Mr. Austin: Is it appropriate at this time to request the appointment of an attorney for the trustee?

The Referee: Do you desire any further examination in this matter?

Mr. Bowden: Yes your Honor; I have Mr. Garnier subpoenaed and also we have the bank records here.

The Referee: How long will that take?

Mr. Bowden: I think one-half hour.

The Referee: I believe then I could call these other proceedings first.

(Whereupon this matter is continued down the calendar.) [166]

The Referee: Now the Melanie Douillard Woodd; are you ready in that matter, Mr. Bowden?

Mr. Bowden: Ready, your Honor.



The Referee: All right; let's go ahead with the examination of the witnesses.

Mr. Bowden: Mr. Garnier, will you please take the stand?

A. P. GARNIER,

being first duly sworn on oath, testified as follows:

By Mr. Bowden:

Q. Mr. Garnier, where do you live?

A. My office and my home is at 405 Beverly Boulevard.

Q. What is your business or your occupation?

A. Real estate and nursery.

Q. Do you know Mrs. Melanie D. Woodd?

A. I do.

Q. How long have you known her?

A. Seven or eight years.

Q. You have had business transactions with her over the last seven or eight years?

A. Yes.

Q. Now did you have a business transaction with Mrs. Melanie Woodd regarding a piece of property in Glendale consisting of a house and lot? [167]

A. No, not with her.

Q. Did you have a transaction?

A. I had with Mr.—I bought it from Mr. Hovey.

Q. Well, you discussed it with Mrs. Woodd, didn't you?

A. No sir, I did not. Mrs. Knapp called me and told me about it.

(Testimony of A. P. Garnier)

Q. What did she tell you?

A. To come to the office, that they had something to talk about; that they wanted to sell a property and then they referred to the fact that Mr. Hovey was the owner.

Q. Had you known Mr. Knapp before that?

A. I had.

Q. How long had you known him?

A. Three or four or five years.

Q. And you knew him through Mrs. Woodd?

A. Yes, well now, I'll tell you; Mrs. Woodd took me to Mr. Heath when he was living, and Mr. Knapp had the same office.

Q. Did you know anything about this property prior to the time Mrs. Woodd called you?

A. I sold it to her.

Q. You sold it to who?           A. To Mrs. Woodd.

Q. How long ago did you sell it to her?

A. Four or five years ago.

Q. Then you purchased this property in your own name, [168] did you?           A. Yes.

Q. What was the date of that?

A. In April some time.

Q. 1946?           A. That's right.

Q. Or January, which?

A. April, I believe; we have the escrow papers.

Q. The escrow, Mr. Garnier, shows December the 27th of 1945.

A. Do you want to check on that, Mr. Rhode? .

Mr. Rhode: The escrow is the best evidence.

Mr. Bowden: It is signed by you on December 27, 1945. I will show it to you.

(Testimony of A. P. Garnier)

The Witness: Well, if that is the date—I cannot recall all of the dates. It is my signature so that must be correct.

Q. By Mr. Bowden: Do you know to whom the \$600 was paid, regarding the first encumbrance?

A. I agreed to pay that, that was on the property, I think it was \$700 when I took it over.

Q. Who held it?

A. The Security Bank, and I took it subject to that payment.

Q. Did you negotiate that loan?

A. No, I did not.

Q. What was the value of that property at the time you [169] opened this escrow?

A. I paid around \$3300 for it, whatever the escrow is.

Q. How long have you been in the real estate business?

A. 30 years right here in Los Angeles. I buy and sell property.

Q. That property was worth a good deal more than \$3300 at that time, wasn't it?

A. That is the price they asked me for.

Q. I didn't ask you that. The property was worth a good deal more than that, was it not?

A. Well, I buy the property for what they want to sell for

Q. Well, you are a real estate man, what do you think it is worth?

Mr. Rhode: I object to that line of questioning. He paid what they asked for it.



(Testimony of A. P. Garnier)

The Referee: Well, do you have an opinion as to the value of that property, other than what they asked for it?

A. Do I have to answer that question?

The Referee: Yes.

A. Well, naturally, I purchased it for a profit.

The Referee: I appreciate that.

A. And when one purchases for a profit you never know until you have the property in your possession just what it is worth. I sold it for a profit.

Q. By the Referee: What did you sell it for? [170]

A. \$8,750.

Q. When did you sell it?

A. 60 or 90 days after that. A man who lived close by came to my office and asked for it, asked me if it was for sale and I told him yes; and he asked what I wanted for it and when I said \$8,750, then we made the deal. He is a barber.

Q. By Mr. Bowden: How much money did you pay outside of the escrow when you purchased this property?

A. I bought it all in the escrow.

Q. How much did you say you paid?

A. I paid \$3300.

Q. It only shows you paid \$2700.

A. Well, subject to that encumbrance, then there was escrow charges and I had refinancing papers and all those taxes and one thing and another. I have a list of it; in fact, it ran more than 3300 when I got through with it.

Q. What did you sell it to Mrs. Woodd for in the first instance? A. Around 34 or \$3500.

Q. What year was that?

A. Five or six years ago.

(Testimony of A. P. Garnier)

Q. In other words you bought it back from her for less than—

A. I didn't buy it from her; I bought it from Mr. Hovey.

Q. Well, Mr. Hovey, then. [171]

A. There is a big difference.

Q. When was the last time you had a transaction with Mrs. Woodd prior to December, 1945?

A. Prior to what?

Q. December 27, 1945.

A. What was that transaction?

Q. What was the last transaction you had with her—

A. Oh, prior to that time?

Q. Yes.

A. Well, I imagine this Glendale property was the last time; when I sold it. I don't recall the date when I sold that.

Q. Haven't you talked with Mrs. Woodd about this property in the last year?

A. Oh, yes; I see her one in awhile and know something about this case in a general way.

Q. How often have you seen her in the last year?

A. Maybe once a month or once in two months or once a week; I couldn't tell you. She is just like any client or anyone I do business with.

Q. What was your business with her in the last year that caused you to see her once a month or once a week?

A. I don't know that there was any particular business.

Q. What would you talk to her about when you saw her?

A. What do you talk to anyone about? That is how I do my business, talking to people and finding out—[172]

(Testimony of A. P. Garnier)

Q. Well, did you talk to her about any property in the last year? What did you talk about to her in the last year? A. Well, what do you say to any body?

Q. Will you answer the question?

A. I don't see how I can answer differently. She was my client and I meet people every month or whatever it happens to be and we talk about different subjects and different deals.

Q. In other words, you have answered as fully as you can?

A. Sure. I don't know how to answer any differently from that.

Q. Who did you sell this property to?

A. The man was a barber and he lived a couple of doors from the Glendale property.

Q. Dermont? A. That is it.

Q. What is his first name? A. I don't know.

Q. By the Referee: When did you first talk to him about selling the property to him?

A. He came into my office.

Q. When was that?

A. I don't know the date.

Q. How long before you went to escrow did you talk to him? [173]

A. I kept the property 60 or 90 days, and then this barber who lived two or three doors away was going to be put out from where he lived and he knew the tenants in there and he came into the office and asked if I wanted to sell the property.

Q. That was 60 days after you bought it?

A. About that, 60 or 90 days.



(Testimony of A. P. Garnier)

Q. You didn't talk to him before you got the property about selling it?

A. Oh, no, I never knew the man.

Q. By Mr. Bowden: Where was the escrow handled?

A. The California Bank at Eighth and Vermont, Escrow No. 8634.

Q. And the date of it?

A. I don't know; it may be that was in April—yes, that is the one that was in April.

Q. By the Referee: After this sale did you have any dealings of any kind with Mrs. Woodd?

A. Not a thing.

Q. No cash transaction? A. Not a thing.

Q. She didn't get any part of this 250 per cent profit?

A. No, sir, that is my business.

The Referee: The circumstances were so unusual, the price and the immediate sale, that the trustee probably wanted to go into that to see if it was a sale, in effect. [174] A. No sir.

Q. You were dealing for yourself at all times?

A. Yes, sir. As I said, Mrs. Knapp called me up and I went to the office and talked to Mr. Knapp and Mrs. Knapp, I recall that because they have a large picture of Christ on the balcony and I admired it, and they told me they wanted to sell the lot right away; then they told me Mr. Hovey was the owner of the property and I went to Mr. Hovey; I never had met him before the escrow.

Q. Now you stated you had known Mrs. Woodd and you made a remark that you knew about this case or had followed this case, what did you hear about that?

A. Well, in a way—I just knew—

(Testimony of A. P. Garnier)

Q. Whatever you heard you heard from her?

A. Well, I suppose.

Q. And Mrs. Knapp called you to come in and see about selling the place for them, or buying it?

A. Yes, to buy it, and I bought the place myself.

Q. At first they wanted you to sell it as a real estate broker?

A. I don't think so. They asked if I wanted to buy it and I said yes.

Q. You are a real estate broker?

A. I am a real estate broker but I buy and sell things myself.

Q. Did you talk to Mrs. Woodd about the sale. [175]

A. No, she had nothing to do with it.

Q. I didn't ask if she had anything to do with it.

A. I never talked to her about it, no, sir.

Q. You never mentioned it to her, that you had bought it?

A. Well, maybe I talked to her afterward, but at the time I purchased the property she did not tell me anything about it nor did I talk to her about it. I had all my dealings with Mr. Hovey.

Q. This amount you got in connection with the sale, that all came from the escrow, did it?

A. Oh, yes, sir, sure. I would not buy anything any other way.

Q. And the check for the balance came to you?

A. Yes. If you want to see my deposit, I will be glad to show it to you.

The Referee: Shortly after that did you draw out any substantial sum of money?

A. Well, I have quite a little bit of money in the bank, so—

(Testimony of A. P. Garnier)

Q. Did you draw out any cash or any—

A. Well, I always write checks.

Q. Well, I mean—the main question is, did any of the money go in any way, shape or form, directly or indirectly, back to Mrs. Woodd?

A. No, sir. [176]

Q. By Mr. Bowden: Did any of that money from the last escrow go to Mr. Hovey or Mr. or Mrs. Knapp?

A. No, sir. All that money is mine.

Q. Did Mr. Dermont have a real estate broker in connection with the same?

A. No, sir, he did not; he made the deal direct.

Q. Mr. Garnier, I will show you a photostatic copy of the escrow in which you purchased that property; I am reading from the body of it—

“We hold a \$750.00 promissory note executed by M. L. Hovey and Anna L. Hovey and Melanie Douillard Woodd.”

Do you know anything about the making of that promissory note or trust deed?

A. No, I know nothing about it.

Q. Do you know why her name was on it?

A. No, I don't know a thing about it. I had to agree in purchasing that property to sign an agreement with the Security Bank that I would be responsible for that note; they have a little piece of paper about that long (indicating) and they would not sell it any other way.

Q. You had to assume it? A. Yes.

Q. But you know nothing about the original ones on the trust deed?

A. No, sir, I know nothing about it. [177]

The Referee: That is all.



R. E. GARCIA,

being first duly sworn, on oath testified as follows:

The Referee: What do you have here?

Mr. Bowden: I just want to introduce a photostatic copy.

Q. By Mr. Bowden: You are from the Security First National Bank? A. I am.

Q. And you have brought your bank records, pursuant to a subpoena? A. I did.

Q. Do you have photostatic copies of the escrow between M. L. Hovey and Anna L. Hovey and A. P.

A. I have.

Mr. Bowden: The witness has handed me an escrow sheet No. 129015-E; instructions dated December 27, 1945 between Anna L. Hovey, M. L. Hovey and A. P. Garnier, beneficial statement dated January 4, 1946; credit slips in connection with said escrow and Security National Bank check dated January 20, 1946, in the sum of \$1,051.94, made payable to M. L. Hovey and Anna L. Hovey and endorsed by Anna L. Hovey and M. L. Hovey. The Security First National Bank check dated January 28, 1946 in the sum of \$1,200.00, made payable to Daniel A. Knapp. endorsed Daniel A. Knapp, and Myra C. Knapp. We offer this as Trustee's next exhibit. [178] You have found no bank account since 1939, have you?

A. Here is one that was closed out in September, 1939; April, 1939 and March, 1939.

Q. These are photostatic copies of the account back in 1939? A. Yes, sir.

Mr. Bowden: I would also like to have these marked, if the Court please.

(Testimony of R. E. Garcia)

The Referee: We will put them all together.

Mr. Bowden: That's all.

Mrs. Woodd: If your Honor please, I would like to clarify that deal of M. L. Hovey's.

The Referee: Then just come up here and take the stand.

MELANIE DOUILLARD WOODD,

being first duly sworn, on oath testified as follows:

The Witness: It seems like they are misleading you a little on this, your Honor. Mr. Garnier sold me the property in 1939 from Robert Cate, he was the agent. I think I met him and his mother then; then after that Mr. Garnier sold a trust deed note I held on my nephew, George Douillard at Bell Gardens; that is where he met Mr. Heath; I took him to the office because this boy had run a bill on me. Then Mr. Garnier sold my inherited property on Vermont and Washington to Mr. Vissalough. That was the last sale from me. Now this \$1,000.00, they are in litigation with Mr. Clements over the 1116 North Hobart, they are in the Supreme Court [179] now. Well, Dr. Hovey had to raise \$900.00 for a bond on the appeal, and Mrs. Knapp had to put up the bond; and she put up her property as the bond; and Dr. Hovey borrowed \$1,000.00 on the Virginia property, taking a second mortgage, making it all one mortgage, and when the nephew told you the other day that he went to Glendale, Mrs. Garnier lives in Glendale and Dr. Hovey is in Los Angeles, so it does look bad. Here is the deed that was drawn up; this is the second deed, the first deed was drawn up by Mrs. Betty Murphy and the boy took a taxi and went there, but he did not tell you because he was not

(Testimony of Melanie Douillard Woodd)

asked. These are the second set of deeds. The first ones didn't go through because Mr. Dick said the first ones were not right.

The Referee: This deed was dated September the 11th, 1946 and recorded September 13th.

Mrs. Woodd: That is right. That is when I took in the first deed to Mr. Dick and he said the first ones were not right.

The Referee: What happened to the first deeds?

Mrs. Woodd: He destroyed them. He threw them away.

The Referee: I will mark these.

Mrs. Woodd: You see, Mr. Bowden, I have lost on a good deal of this,

The Referee: Now this first deed, apparently, didn't prove adequate?

Mrs. Woodd: Yes, sir, he went to MacNair, I think you [180] call it, and that is why the boy didn't recognize it.

The Referee: That one bears date of September the 11th. Well, I will mark this.

Mrs. Woodd: Maybe they were both made the same date, I don't know. I took it down to have it recorded but instead of doing that I went straight to Mr. Dick because I knew it was something dealing with the mortgage.

The Referee: Now, about this very sale, Mrs. Woodd, do you have any further information in connection with it?

Mrs. Woodd: Which one?

The Referee: The \$3,300.00 deal that was resold at 250 per cent profit.

Mrs. Woodd: No, sir.



(Testimony of Melanie Douillard Woodd)

The Referee: You didn't know that had been sold to him at all?

Mrs. Woodd: No. This last one, I don't know at all.

The Referee: But you know the broker?

Mrs. Woodd: Yes, sir.

The Referee: Did you know it has been sold to him?

Mrs. Woodd: Mr. Garnier?

The Referee: Yes.

Mrs. Woodd: Oh, yes, I knew that. Mr. Knapp told my lawyer and I.

The Referee: How did he happen to go in to see these people?

Mrs. Woodd: Oh, I might have told him it was for sale, [181] I see him every once in awhile.

The Referee: How did you know it was for sale?

Mrs. Woodd: Mr. Knapp said it was for sale and Mr. Heath had said it was for sale, time and time again.

The Referee: Weren't you interested in getting as much out of it as you could?

Mrs. Woodd: No, no, it was not mine.

The Referee: Well, it was paying your bills, was it not?

Mrs. Woodd: I don't know about that. They took the property away from me in 1943 by a Sheriff's sale. Mr. Clements and Mr. Douillard had the right to buy that too; why didn't they?

The Referee: Nobody could buy it from them unless they would sell; they could not be forced to sell, could they?

Mrs. Woodd: No, no. Would you like to know about the trees? I brought the receipt.

(Testimony of Melanie Douillard Woodd)

The Referee: I don't know that that is in issue here.

Mrs. Woodd: No. It just caused me to go to Mr. Knapp, and he said not to annoy Dr. Hovey any more with that.

Q. By Mr. Bowden: Mrs. Woodd, you said something about you had to sign a promissory note for \$1,000.00, that they had to have some money on an appeal?

A. Yes, sir.

Q. Tell us about that.

A. All I know is I went up there and Mr. Dick said I had to come in; maybe I had to sign something or assure the [182] title.

Q. No. Now, at the time you signed the note, giving the Security-First National Bank a trust deed on that property, the property stood in the name of Mr. and Mrs. Hovey and had been sold at a Sheriff's sale and you no longer had any interest in it, is that right?

A. I had no interest; it was sold to Dr. Hovey, his wife was not on there.

Q. Anyway, Dr. Hovey executed the note; his wife joined him and you also put your name on that. Just tell us about that.

A. I cannot tell you. You would have to call in the bank for that.

Q. You know whether you went up there and signed a promissory note?

A. Did I sign a promissory note?

(Testimony of Melanie Douillard Woodd)

Q. According to the paper. And you said this morning that Dr. Hovey and Mr. Knapp and you had to have some money for an appeal. A. Yes, sir.

Q. And that Dr. Hovey had to put \$900.00 up and that Dr. Hovey called you in.

A. No, Mr. Dick called me in.

Q. Who is Mr. Dick?

A. In the loan and trust department. I had a friend with me. Mr. Dick can tell you why I signed. [183]

Q. By the Referee: Now, this deed, you say there was some question about this deed, and you went back to the bank and the bank made up a deed.

A. Not this one. The one he had Betty Murphy make.

Q. How long before was that?

A. It must have been a day or two.

Q. And who said it was not proper for recordation?

A. Mr. Dick.

Q. Who is he?

A. He is in the loan and trust department of the Security Bank.

Q. Where is the other deed?

A. I think I destroyed those. They were no good.

Q. How many weeks or days had he had the other deed? A. I think just a day or two.

Q. And you took it down to the bank?

A. Yes, sir.

Q. That was before it was recorded?

A. That is right.



(Testimony of Melanie Douillard Woodd)

Q. And when you took it to the bank, you showed it to Mr. Dick?           A. Yes, sir.

Q. And he told you there was some defect in it?

A. That's right.

Q. So a second deed was made?

A. That's right. [184]

Q. Did they prepare it?

A. I asked him for a couple of blanks and he said, "Take these and have them filled out somewhere," and I said, "I don't know where to go," and he said to his secretary, "Fill in the legal for her," he said, "We can do that for an old friend."

Q. So he filled in the legal one to Mr. Douillard, and one from Mr. Douillard back to you?

A. That is right. That is when Mr. Douillard said he went to Vermont and had the first one notarized, and then everything would be straight.

Q. He got two blanks when you went in there?

A. Yes, sir.

Q. One to go to the Hovey's?           A. Yes.

Q. And you got another form?

A. Yes, Louis had made the one, the one that Betty Murphy made, and he said he did that in case he got killed or anything I would have the property.

The Referee: Any other questions?

Mr. Bowden: That is all.

The Referee: This matter may go off calendar. [185]

Melanie Douillard Woodd

January 20, 1947

Order to Show Cause on Various Parties;

Order to Show Cause on Bankrupt;

Examination of Witnesses.

The Referee: Melanie Douillard Woodd.

Mr. Bowden: Ready, if the Court please. There are two matters, if the Court please, one is to revoke the discharge of the bankrupt, and the other is an order to show cause to determine the rights of the trustee and various other parties in certain real property. I might say at the outset that the facts in both instances will be the same and I wonder if there will be any objection to considering both matters at one time, or whether we should proceed with the motion first.

The Referee: I have no thought in the matter. What do counsel desire?

Mr. Bowden: Mr. Knapp, would you—

The Referee: What do we have here?

Mr. Bowden: A petition to revoke the bankrupt's discharge and an order to show cause pertaining to the right of the bankrupt and other parties in and to various properties.

The Referee: Well, if they are kindred, whether they are heard together or not, we might assume that any matters which are pertinent or any testimony in the other hearing [186] will be considered in that matter.

Mr. Bowden: That is what I have in mind. Is that satisfactory to you, Mr. Knapp and Mr. Stewart?

Mr. Knapp: That is satisfactory.

Mr. Bowden: Mr. Knapp, will you take the stand, please?

DANIEL A. KNAPP,

being first duly sworn, on oath testified as follows:

Q. By Mr. Bowden: Mr. Knapp, you are one of the respondents in this proceeding, are you, that is, referring to the order to show cause? A. Yes, sir.

Q. And you are representing one of the respondents, Mrs. Edna D. Heath as executrix of the estate of Fred W. Heath, deceased?

A. Yes, and I would like to state in addition to the answer "Yes," that I am the attorney for the estate.

Q. In other words, you represent Mrs. Heath in the probate proceedings in the Superior Court of Los Angeles County? A. Yes.

Q. Now you formerly represented the bankrupt herein, Mrs. Melanie Douillard Woodd, prior to the filing of her bankruptcy proceeding? A. Yes, at one time.

Q. In what capacity did you represent her?

A. In the case of Douillard versus Woodd. I, with [187] Fred W. Heath, was her attorney.

Q. Now, Mr. Knapp, briefly, and would you tell us what was involved in the Douillard versus Woodd action?

A. It was a case where \$7,500.00 was claimed by the Douillards, plaintiffs in that case, and against Melanie Douillard Woodd, on the ground that she had promised or orally contracted to pay them that sum of money if they would not contest her mother's will.

Q. Now, the Douillards and Mrs. Woodd were related, or are related, are they not?

A. Well, my—the pleadings so stated, that the Douillards were her brothers, and Puissiguer was her nephew and another of the plaintiffs, the party plaintiff was her niece, I think.

Q. In other words, it was a sort of a family squabble?

A. True.



(Testimony of Daniel A. Knapp)

Q. Mr. Heath represented Mrs. Woodd and you later became associated with Mr. Heath in that litigation; is that correct?

A. That is right, with this addition, that Mr. Heath had been her attorney for a good many years.

Q. Yes, he formerly represented her and then you and he represented her? A. That is right.

Q. What was the final result of the Douillard versus Woodd case? [188]

A. The judgment went for the plaintiff and the final order of the court was the same.

Q. Approximately what date was that?

A. I could not tell you.

Q. Could you tell us by referring to your file?

A. No, I haven't that here.

Q. You can furnish that information to us later from your file? A. Yes, I think so.

Q. Would it be the month of August, 1941 or '42?

A. Well, it would be more likely to be 1942, I would say.

Q. And the amount of the judgment was \$7,500.00 plus costs and interest, was it? A. Yes.

Q. Now, did you and Mr. Heath sue Mrs. Woodd for attorneys' fees? A. Yes.

Q. When was that suit commenced?

A. I think the 10th day of April, 1940.

Q. 1940? A. Yes.

Q. And that suit was brought in the name of M. L. Hovey, was it not? A. Right.

Q. What was the reason for that? [189]

A. Purely for convenience as the collector.

(Testimony of Daniel A. Knapp)

Q. Had Mrs. Woodd paid you any money up until the time of the filing of that suit?           A. No.

Q. Had you ever rendered a statement for your services to her?

A. No, that was not rendered up to the time of the conference.

Q. Well, what conference, a conference with Mrs. Woodd?

A. A conference with Mrs. Woodd on the 10th of the month.

Q. 10th of August, 1942?

A. No, the 10th of April, 1940.

Q. Your suit was filed in August.

A. The suit was filed April the 10th, 1940, I think.

Mr. Bowden: My error, I read August, it was April the 10th that the suit was filed, in 1940?

A. That's right.

Q. And what was the conference with Mrs. Wood about that day, without divulging any confidential information?

A. The substance of the conversation was that Mr. Heath and I went over our services, the condition of the case and the probability that it would require an appeal and much more services and that she had not paid anything and it was necessary to figure out what she would pay, and that Mr. Heath and I thought our services were worth contemplatively [190] on the contract to carry on the appeal, together with the work done in the past, \$7,000.00; she thought that was too much and so stated and then we said we would bring a friendly suit, using Dr. Hovey as the plaintiff in this case, and let the court decide how much the amount should be.

(Testimony of Daniel A. Knapp)

Q. And you brought a friendly suit?

A. And the suit was brought that day.

Q. How much did you sue for?

A. I think \$7,000.00.

Q. And the total amount involved in the litigation was \$7,500.00?

A. Yes, sir, but this included a great deal of services in the past, and besides that Mrs. Woodd stated she didn't care how much she expended; that the case was so unjust as against her that the amount involved in service was not an item that she was considering.

Q. Did you carry on the appeal in the Douillard versus Woodd case?           A. Yes, we did.

Q. And when was that appeal decided?

A. That, I think, is what you had reference to awhile ago. I think about 1942.

Q. I understood that was the date of the original judgment; when was the original judgment in the case of Douillard versus Woodd?

A. The judgment was rendered—I think, as near as [191] I can recollect, about the 22nd day of April, 1940.

Q. But you had received notice from the court that the judgment was going to be rendered in favor of the Douillards and against Mrs. Woodd prior to April the 25th, 1940, had you not?

A. I don't know whether there was a minute order entered at that time or whether there was a—at any rate, I had a strong feeling there was going to be a judgment rendered.

Q. Well, there was a card sent out prior to the conference had with Mrs. Woodd, wasn't there?

A. There could be.



(Testimony of Daniel A. Knapp)

Q. When did you obtain your judgment against Mrs. Woodd, that is, when did Dr. Hovey obtain his judgment?

A. On the 3rd day of July, 1941, and entered on the 8th day of July, 1941.

Q. And the appeal was decided August, 1942?

A. In the Douillard case, and I am not sure of the date of the appeal but I think it was about that time.

Q. The judgment of Hovey against Mrs. Woodd was a stipulated judgment, wasn't it?

A. I was not there at the time but the records of the case that came to my attention were to the effect that it was stipulated that the judgment would be \$4,000.00.

Q. By the Referee: Who was there, do you know, representing you? [192]

A. Mr. Heath, I think I have a copy of it here.

Q. You see you testified that you were going to let the court go into the matter and fix the amount of the fees?

A. That is right. That was my idea at the time. Mrs. Woodd came forward at that time and she was willing to pay \$4,000.00 and it was brought to the attention of the court, as I understand. I have a copy of the judgment that was rendered. (Hands instrument to counsel.)

Mr. Bowden: Thank you.

The Witness: Now, I would like to correct that testimony: Mrs. Woodd came forward at the time of the trial of the case.

Q. By Mr. Bowden: Who represented Mrs. Woodd in that proceeding?      A. Mr. E. D. Martindale.

Q. He is an attorney?      A. Yes, certainly.

(Testimony of Daniel A. Knapp)

Q. Where was his office at that time?

A. I don't know.

Q. Do you have a copy of his answer there or Mrs. Woodd's answer?      A. No, I don't think I have.

Q. Would you look and see, Mr. Knapp, and I will take the address off of that.

A. It is possible. No, I have no copy of the answer here. [193]

Q. Do you have any other pleadings that might show the address?      A. As to what point?

Q. Any pleading or order that might show the address of Mr. Martindale at the time of the filing of the answer or shortly thereabouts?

A. No, I have no other pleading showing the status of Mr. Martindale.

Q. Was there any answer interposed in the action?

A. Yes, there was an answer.

Q. You don't know where your copy is?

A. No, I don't know where it is now, no.

Q. Now your judgment or Dr. Hovey's judgment was entered against Mrs. Woodd on July the 8th, 1941?

A. Correct.

Q. And thereafter was an execution issued?

A. There was.

Q. What date was that?

A. I have a notice, by virtue of a writ of execution issued and delivered and annexed as a true copy this 9th day of February, and the writ of execution shows the 9th day of October, 1942.

Q. The execution was originally issued July the 17th, 1941, isn't that correct?

A. I think it was, but I am not sure.

(Testimony of Daniel A. Knapp)

Q. And the property was executed on when? [194]

A. As I stated—

Q. That is the execution sale you are referring to now, is it not?      A. That is right.

Q. What is the date of that?

A. The 15th of October, 1942.

Q. So apparently there was nothing done between July the 17th, 1941 and October the 15th, 1942.

A. Correct.

Q. And the final decision in the Douillard case was August the 3rd, 1942; that is, the appeal was decided then?      A. Somewhere in there.

Q. What property was executed on in that action that belonged to the bankrupt here?      A. Two properties.

Q. Two pieces of property?

A. Yes, not on one execution. One was the south 108 feet of Block 8 Zahn Tract.

Q. That is the property described in Paragraph VIII of your and Mrs. Heath's answer to this order to show cause. Is that correct?

A. May I withdraw my testimony? I have got hold of the wrong execution.

Mr. Bowden: Certainly, Mr. Knapp. We want the facts, we don't want to mislead the Referee.

The Referee: We will continue this matter to 2:00 [195] o'clock this afternoon.

Mr. Bowden: You can get those facts for us by 2:00, we will go over it again then.

Mr. Knapp: I have an alias execution—

Mr. Bowden: Just a minute. The Referee has continued this until 2:00 o'clock. Let's have those dates at



(Testimony of Daniel A. Knapp)

2:00 o'clock, Mr. Knapp, and we will correct it accordingly.

If the Court please, Mr. Douillard is here, he is not under subpoena; will the Court instruct him to return?

The Referee: Is he desired?

Mr. Bowden: Yes, sir; will the Court instruct him and all of the other witnesses?

The Referee: Yes, all of the witnesses will return at 2:00 o'clock.

(Court adjourned at 2:00 o'clock, at which time it was convened and the following proceedings were had:) [196]

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The Referee: Now, the Melanie D. Woodd matter.

Mr. Bowden: Mr. Knapp, will you take the stand, please.

DANIEL A. KNAPP,

having been previously sworn, on oath testified as follows:

By Mr. Bowden:

Q. Mr. Knapp, I asked you this morning, I believe, if you had a copy of the answer filed by Mr. Martindale in the Hovey versus Woodd matter.

A. I don't think I have any copy, I could not find one in the record.

Q. I will show you the opening brief of Emile A. Douillard versus Lloyd E. Smith, District Court of Appeal, Second Appellate District, State of California, Second

(Testimony of Daniel A. Knapp)

Civil No. 14754; do you recognize that as being one of the briefs filed in that particular action?

A. Yes, sir.

Q. And on page 5 the statement is made as follows:

“Answer”—referring to the answer filed by Mr. Martindale. “Mr. Martindale’s office address is that of the defendant Fred W. Heath and Daniel A. Knapp, and his telephone number that of Daniel A. Knapp.” Is that a true statement?

A. I don’t know anything about that.

Q. You wouldn’t say it is not true?

A. I would not say except that he was not in that office or had that telephone number. [197]

Q. But he might have had that telephone number and address on his stationery?

A. I don’t know anything about it. I might add to the Court that Mr. Martindale and I were not even on good terms.

Q. And you have made the statement you cannot find a copy of that answer?           A. I cannot.

Q. Mr. Knapp, I believe we could take as correct, as to the point of the date of the execution sale on the Glendale property, I believe that was July the 17th, 1946; that is, the execution, July the 17th, 1946, and the sale under the execution, September the 8th, 1946?

A. The answer was issued on the 17th day of July, 1941 and the sale on the 8th day of September, 1942.

Mr. Bowden: I am sorry, I said 1946. I meant 1942.

Q. By Mr. Bowden: Now, when was the execution issued on the Hobart property? When I refer to the Hobart property, I am referring to the property described

(Testimony of Daniel A. Knapp)

in the trustee's order to show cause in this particular hearing.

A. My records do not show when the execution was issued on the Hobart property.

Q. Do you know when the sale was? A. I do.

Q. In your answer you say April the 12th, 1943. Is that correct? A. Correct. [198]

Q. Now, on the Hobart property, Mrs. Woodd had a homestead recorded.

A. Yes, a \$1,000.00 homestead.

Q. What became of the homestead?

A. Why, it is on record.

Q. How was the property sold?

A. There was an appraisement.

Q. You followed the Code procedure? A. Yes.

Q. How much was paid to her out of that execution sale?

A. It is rather difficult for me to say. The execution sales and attachments and everything was carried on by Mr. Heath. My understanding was she received \$1,000.00.

Q. From what source was the \$1,000.00 obtained?

A. I don't know, I am sure.

Q. Wasn't there a trust deed put on the property and she was paid out of the proceeds of that trust deed?

A. I don't recall that; as I said, that was under the charge of Mr. Heath and I don't recall it.

Q. Did Mrs. Woodd get \$1,000.00 in cash out of that homestead?

A. I could not tell you, that was under Mr. Heath's duties and I didn't pay any attention to it; I could not tell *tell*. I can only state it was my understanding she was paid \$1,000.00 but it is hearsay.



(Testimony of Daniel A. Knapp)

Q. Mr. Heath handled all of these matters up to that [199] time, did he not?

A. All that had to do with the attachment, execution, and so forth.

Q. And who handled the records on the attorneys' claim against Mrs. Woodd?

A. I don't understand your question.

Q. How were the books kept, so that you and Mr. Heath would know how much Mrs. Woodd owed, which one of you?

A. The only time there were any books, to my knowledge or any amount was gone over, to my knowledge, was at the initial conversation when it was gone into in detail.

Q. Well, if any money was paid to Mrs. Woodd, or any charges made to her account, who would handle those?

A. It was gone over in detail by Mr. Heath at that time.

Q. Did Mr. Heath keep track of his own charges as far as Mrs. Woodd was concerned?

A. My recollection is he had the charges there.

Q. Now you are the attorney for Mrs. Fred W. Heath?

A. Mrs. Edna D. Heath.

Q. Who is the widow of Mr. Fred Heath?

A. Yes, sir.

Q. You are the attorney for the widow in that estate?

A. Yes, sir.

Q. In that procedure you filed a will, did you not?

A. Yes, sir. [200]

Q. Take a look at this and tell me if this is a photo-static copy of the will you filed in that proceeding.

A. Well, you have a copy there; I suppose it is. I think it is.

(Testimony of Daniel A. Knapp)

Q. Well, if there is any question about it we can get the original.

A. I suppose that is a photostatic copy, I think it is the will.

Q. Can you read this writing?

A. With difficulty.

Mr. Bowden: I thought you could read it better than I can, for the purpose of the record.

A. Well, I don't know.

Mr. Bowden: Well, let's see if we can read it into the record. This is on the stationery of Fred W. Heath, Attorney at Law, 424 Black Building, Michigan 6929, South Pasadena, Los Angeles, California, April 22, 1943.

"Dear Edna: Every night when I go out to my lonely bed I feel less assurance than I did the previous night that I will be here when morning comes, so just to be prepared—I want you to have whatever there is belonging to me when I die. I make no provisions for the children as I know you will. Mrs. Wilger is about paid up. I get 10 per cent of the amount for which she sells her house, less \$1,000.00 advanced. Santa Rosa Mining Company owes me \$5,000.00. I have a [201] one-half interest in any money collected on the Lundquist Kruse judgment, about \$2,500.00. I have a one-half interest in the Annie Walterson judgment, now about \$8,000.00 that's due. Mrs. Woodd owes me about \$1,000.00, represented in the Hovey versus Woodd judgment. The balance due on the M. J. Nevaes mortgage note, about \$125.00. The Masten mortgage note is all mine. The \$250.00 gold piece I expected to give to Katherine. Roland H. Wiley, Las Vegas attorney, has a new set of Nevada Statutes

(Testimony of Daniel A. Knapp)

worth \$50.00, which belong to me. No strings on it. Other odds and ends amount to practically nothing.

"If I should forget to wake up some morning, it will be a nice way out as I am burden enough while I am able to be my own nurse and valet. Don't spend any money on a funeral—buy war bonds instead. I want you to execute my will, without bond.

"Dated April 22, 1943. Fred W. Heath, Testator. Filed January 23rd, 1946, J. F. Moroney, County Clerk, H. L. Doyle, Deputy.

"Admitted to probate February 1, 1946. Attest: J. F. Moroney, County Clerk, by H. Roberts, Deputy, No. 251455."

Mr. Bowden: We offer this in evidence, if the Court please.

Q. By Mr. Bowden: Now, when was Dr. Hovey instructed [202] to sell the Glendale property?

A. Either in the last part of 1945 or the first part of 1946. I might explain, however, that the statement as being instructed to sell the property is somewhat misleading.

Mr. Bowden: Just a minute, please.

The Referee: Oh, no, just let him go ahead and explain.

The Witness: Mr. Garnier came to my office and wanted to buy the property and that was in the last part of December, 1945 or the first of January, 1946, and I conferred with Mrs. Heath and she said whatever I wanted to do was all right; so I looked over the matter and told him that we would sell and I prepared a deed



(Testimony of Daniel A. Knapp)

and had Dr. Hovey sign it. If I remember correctly, it was to be placed in escrow.

Q. Did you make any inquiry as to the value of that Glendale property prior to that time?

A. Oh, yes, indeed I did, half a dozen different sources.

Q. Did you have any conversation with Mr. Garnier as to what you wanted for it?           A. Yes.

Q. What was the conversation?

A. Well, my present recollection is that the purchase price was to be thirty-four or thirty-five hundred dollars or something in there, and he was to assume the trust deed, leaving a note of something in the neighborhood of \$2,400.00.

Q. Do you know that he sold that property shortly thereafter for \$8,000.00, \$8,750.00? [203]

A. No, that is all news to me.

Q. Didn't you know at the time you talked to Mr. Garnier that the property was worth in excess of \$8,000.00?

A. I had no such idea. The property as I saw it and knew it was termite infested, it was on low ground and the tenants were constantly complaining about it, it was run down and all and I thought Mr. Garnier was giving me a good price; that was prior to the time prices went up with a bound.

Q. When was it that you had this conversation with Mr. Garnier?

A. I think the last of December or the first of January.

(Testimony of Daniel A. Knapp)

Q. 1945?

A. Yes, I think so, I am not sure. I will go further for the record—I really thought Mr. Garnier was sticking his neck out.

Q. It didn't turn out that way, did it?

A. I don't know; he never told me.

Q. Tell us what became of the proceeds of that sale, Mr. Knapp.

A. There was \$1,600.00 turned over to me, \$400.00 on account of the debt to Mr. Heath.

Q. Which left \$1,200.00 on account of your interest?

A. And \$1,200.00 is still in the hands of Dr. Hovey.

Q. Was there only \$2,400.00 paid into that escrow? [204]

A. That is all. That is what was paid into the escrow, yes, sir. That is my recollection.

Mr. Bowden: May I have a photostatic copy of that escrow, if the Court please?

(The Court hands instrument to counsel.)

Mr. Knapp: I might say to clarify this, your Honor, that Dr. Hovey's claim is that \$1,200.00 was due and owing to him from Mr. Heath.

Q. By the Referee: Did you have anything owing still when you got the \$1,200.00?

A. Oh, yes, your Honor.

Q. How much?

A. You see the \$1,200.00 didn't represent what was paid on my fees.

Q. What did it represent?

A. Well, wait a minute—there was \$400.00 of the money that I received that was upon the debt for the rent.

(Testimony of Daniel A. Knapp)

Q. That is, that Mr. Knapp owed you that, or rather that Mr. Heath owed you?

A. Yes, Mr. Heath owed me.

Q. That was money of his that was being paid?

A. That's right.

The Referee: Being paid to you?

A. Yes, sir.

Q. And the \$1,200.00 was to apply on your fee?

A. That is right. [205]

Q. Was anything else owing to you after that?

A. What is that?

Q. Were you to get anything else after that?

A. No arrangement for it at all, I thought we owned this property.

Q. In what proportion?

A. Five and three. Five in favor of Mr. Heath—

The Referee: Five-eighths and three-eighths?

A. Yes, sir.

Q. Then after the judgment was secured by Dr. Hovey, Mr. Heath says here that, "Mrs. Woodd owes me about \$1,000.00 represented in the Hovey versus Woodd judgment." Let's see if we carry the same proportions—when was this payment, Mr. Bowden, that you have referred to?

Mr. Bowden: The check to Daniel A. Knapp is dated January 28, 1946 in the sum of \$1,200.00.

The Referee: If Mr. Heath had \$1,000.00 owing, if that would represent—

Mr. Knapp: There was \$1,200.00 in the estate and \$1,200.00 went to Mr. Knapp, of which \$400.00 was for rent.



(Testimony of Daniel A. Knapp)

The Referee: I see. Now, after that judgment was secured, Mr. Heath says this: "Mrs. Woodd owes me about \$1,000.00 represented in the Hovey versus Woodd judgment." Now, Mr. Heath had, after the judgment was recovered in Hovey's name, had about \$1,000.00 coming from Mrs. Woodd and you had something less than he had at all times? [206]

A. May I ask when he said that arose?

The Referee: I am just reading this. I have not a clear picture of it.

Mr. Knapp: It must have been some arrangement between him and Mrs. Woodd, I am quite sure it didn't have any reference to the judgment or to the fees.

The Referee: That is the wording of it, "Mrs. Woodd owes me about \$1,000.00 recovered in the Hovey versus Woodd judgment." I think there is only one Hovey versus Woodd judgment.

Mr. Knapp: That is right.

The Referee: Now, in connection with that, Mrs. Woodd owed him \$1,000.00. Now you contend he is wrong in this; that Mrs. Woodd owed him more than \$1,000.00?

A. The only explanation that I can think of to that proposition is that possibly, possibly he paid the \$1,000.00 for Mrs. Woodd and she agreed to pay it back to him, I don't know; it was to be taken out of the judgment.

Q. Is that just conjecture or have you ever heard anyone say that?

A. I never knew how the \$1,000.00 was paid.

(Testimony of Daniel A. Knapp)

Q. If you think that is the case, then there is \$1,000.00 owing by Mrs. Woodd to this estate, in addition.

A. Yes, it would appear so, according to that.

The Referee: Just go ahead, I thought maybe I could get a clear picture of this, but I will just have to wait [207] and hear from all sides; it is a little confusing now.

Mr. Knapp: I am sorry, your Honor.

Q. By Mr. Bowden: Mr. Hovey on January 28, 1946 received a check from that escrow in the sum of \$1,054.94, is that correct? A. \$1,054.94?

Q. Yes, \$1,054.94. A. Are you referring to—

Q. I am referring to the same escrow we have been talking about.

A. I don't know anything about that. I supposed he received \$2,400.00. But I do know—\$1,200.00 was paid directly to me.

Q. In a check for \$1,200.00 paid directly to you?

A. Yes, sir.

Q. And there is one made out to M. L. Hovey and Anna L. Hovey for \$1,054.94; what interest did Anna L. Hovey have in that judgment?

A. I know of no interest.

Q. Why was the check made to them jointly?

A. I don't know, probably at his request.

Q. By the Referee: Dr. Hovey was the agent of Mr. Heath, was he? A. Yes, and Mr. Knapp.

Q. And after this date here of April the 23rd, 1943, there was paid from this former Woodd property—how much [208] did you say?

Mr. Bowden: Paid to Hovey?

(Testimony of Daniel A. Knapp)

The Referee: Yes.

Mr. Bowden: The check is for \$1,054.94.

Q. By the Referee: Now, that is more than what Mr. Heath said was owing by Mrs. Wood, was it not?

Mr. Bowden: Yes, your Honor, \$54.94.

The Referee: All right. Proceed.

Q. By Mr. Bowden: You don't know why the check was made to Mr. and Mrs. Hovey?

A. No, I do not.

Q. Mr. Knapp, you were handling this escrow, were you not?

A. No. After the sale was made, that was after the negotiations were entered into, I had nothing more to do with the escrow, it was between Mr. Garnier and Dr. Hovey.

Q. And you didn't pay any more attention to it?

A. Why, no.

Q. And Dr. Hovey had no interest in it, you were the one who had the interest in it?

A. Why, yes, certainly; I received the property.

Q. How did you happen to receive only \$1,200.00; did you demand \$1,200.00? A. Surely I did.

Q. And did you tell them to pay the rest to Dr. Hovey? A. Surely. [209]

Q. For what purpose?

A. As the representative of the Heath estate.

Q. But Mrs. Heath was the representative of Mr. Heath's estate at that time, was she not, and you were her attorney?

A. I don't think so; I don't think the estate had been filed at that time.



(Testimony of Daniel A. Knapp)

Q. What is the date of that filing?

The Referee: Admitted to probate February the 14th, 1946 and filed January the 23rd, 1946.

Mr. Knapp: That bears out my memory; at that time the estate had not been put into the probate and I put it there, keeping it under the trusteeship of Dr. Hovey until such time as the estate could be opened.

Q. By Mr. Bowden: You say you instructed them to send this money to Dr. Hovey as the agent for Mrs. Heath or the estate?

A. I didn't instruct any such thing. I told Mr. Garnier to proceed in his negotiations, not negotiations but in his escrow proceedings, with Dr. Hovey. The only thing I did in connection with it was to give my permission for the sale.

Q. Yes, but what I am trying to get at is this: Now, you have testified that you and Mr. Heath owned this piece of property and that Dr. Hovey only took it in his name for collection, is that correct?

A. That is correct. [210]

Q. Then why did you instruct the escrow to turn any money over to Dr. Hovey when you knew Dr. Hovey didn't have anything coming to him?

A. Because Dr. Hovey was to continue as our trustee until we closed up all of the matter and until the estate came on and the matter came into the estate there would be no occasion for me to take any money, I could not do so, it had to go through Dr. Hovey, as the agent.

Q. Then when you filed the petition to probate Mr. Heath's estate, why didn't you set forth that Dr. Hovey held that?

A. I think that is being done.

(Testimony of Daniel A. Knapp)

Q. I am talking about at the time you filed the petition?

A. You don't set forth or itemize anything.

Q. Don't you give an estimate, the approximate amount of the estate, the real property and the interest in it? A. I never knew anyone to do that.

Q. Have you filed an inventory in the estate? A. I think the inventory has been filed.

Q. When was it filed?

A. I think in the last three or four weeks.

Q. Did you prepare it?

A. It was prepared in my office and O.K.'d by me.

Q. It must have been filed this week, it was not filed last week. [211]

By the Referee:

Q. Do you represent the estate, Mr. Knapp?

A. Yes, sir.

Q. During your connection, what does your investigation reveal as to its assets?

A. I have never had an opportunity to talk with Mrs. Woodd about that \$1,000.00 and I will say further we have claim after claim of Mr. Heath's, some of which we found were absolutely worthless and had no basis whatsoever and therefore we could not put a claim in sooner.

Q. Claims against Mr. Heath?

A. Claims in favor of Mr. Heath.

Q. And do you mean by that you thought this was worthless?

A. I don't know, I have not had an opportunity to talk to Mrs. Woodd about it.

(Testimony of Daniel A. Knapp)

Q. You have had plenty of opportunity, haven't you?

A. I don't think so.

Q. In the last year?

A. This is a claim in favor of Mr. Heath.

Q. It is an asset, isn't it, if it is correct?

A. Yes, sir.

Q. And you have not had an opportunity—

A. At any rate, I have not talked with her.

Q. Well, let's put it that way.

A. I don't know that I have had an opportunity.

The Referee: We will take an adjournment right now and [212] you can talk to her if you want to. I would like to know something about it. Proceed.

Q. By Mr. Bowden: Mr. Knapp, have you talked to Dr. Hovey about this \$1,054.94?

A. No, I never have. I don't know anything about it. I supposed the amount was \$1,200.00, he so testified.

Q. You knew he was going to make that sale?

A. Certainly.

Q. And you knew he received it about the time you received your check, which was January 26, 1946?

A. I presumed he did.

Q. Didn't you give instructions to the escrow to send it to him?

A. I never did. I explained to you I left that matter for Dr. Hovey to carry out, because I had no authority to interfere at that time with Dr. Hovey, and couldn't until the estate took the matter up.

Q. Tell us what happened when the escrow instructions were brought in? Didn't you give Dr. Hovey any instructions?

A. Mr. Bowden, the sale of this property was made by M. L. Hovey, therefore when Mr. Garnier went into



(Testimony of Daniel A. Knapp)

escrow he had to carry on his negotiations with M. L. Hovey, therefore the instructions had to be by M. L. Hovey; I didn't appear directly in that matter at all.

Q. There is no question about that, but I am not [213] talking about that. Didn't you give Mr. Hovey any instructions as to what to do with the proceeds of that sale?

A. Yes, sir, to pay \$1,200.00 to Mr. Knapp; \$400.00 on a debt and \$800.00 to apply upon the account.

Q. What about the balance?

A. I didn't say anything about that.

Q. And you were representing the executrix of Mr. Heath's estate?

A. I was not at that time, if there was no estate.

Q. Well, you did within a few days after the check was drawn?

A. In a month or so.

Q. It is not a month, a few days.

A. No matter how long it was. At that time I was not representing—I knew there was \$1,200.00 paid over to Dr. Hovey, he said so.

Q. You knew you were going to represent Mrs. Heath in that estate?

A. I don't know that I did.

Q. Did you make any demand on Dr. Hovey from January the 23rd, 1946 down to the present time to account for that \$1,054.94?

A. I did not. I made demand upon him to account for \$1,200.00.

Q. When did you make that demand on him?

A. Several times. [214]

Q. When was the first time?

A. I think perhaps six or eight—maybe three or four months ago.

(Testimony of Daniel A. Knapp)

Q. Have you ever received any accounting from him?

A. No, Dr. Hovey said that it was due and owing to him by Mr. Heath.

Q. For what?

A. He just said Mr. Heath borrowed some money from him and that on a certain occasion—I will withdraw my statement. He stated on a certain occasion he received some money from the sale of property belonging to his family in Nevada and at that time there was a distribution and I understood him to say that \$1,200.00 of that money he turned over to Mr. Heath under an agreement that Mr. Heath was to pay it back on demand, but he kept no writing and when he informed me of that I told him that matter would come up in the estate in the regular order.

Q. That was after the will had been filed for probate?

A. Yes.

Q. Didn't you advise him at that time that he should file his claim with the executrix?

A. I have not advised Dr. Hovey what to do.

Q. Well, didn't you tell him or demand of him to follow that procedure?

A. No, because the inventory has not been filed except in the last few days. [215]

Q. When did you prepare that inventory?

A. Mrs. Knapp has been trying to get that inventory in order for three months.

Q. Why didn't you start before that time?

A. I don't know why; because my understanding is that the claims were such we could not get hold of it. For example—in going into lands of this kind—and I don't think that has anything to do with this case—

(Testimony of Daniel A. Knapp)

Mr. Bowden: Then don't tell us about them; just tell us why you didn't start preparing the inventory before? The law provides that the inventory will be filed within a year, doesn't it? A. Yes, and it will be.

Q. It has not been filed within the year.

A. The year is not up until February.

Q. Why didn't you file it before?

A. Well, just to illustrate: There was a deed where there was some land and we ran that down and found no consideration was paid for that land whatsoever and if we put that in we would run into a lawsuit that would cost the estate a lot of money. That was just one point.

Q. If you had read Mr. Heath's will you would have known he didn't claim—

A. I don't think Mr. Heath had the slightest reference to his claim for fees. I think it is something entirely different. Mr. Heath had always said, and I think to this [216] day he believed his fees were worth \$4,500.00, and he was entitled to it.

Q. You think he must have forgotten it?

A. I don't know whether he forgot it or what he did; it is not explainable to me.

Q. By the Referee: May I get this distribution straight? Now, the \$1,200.00 out of escrow.

Mr. Bowden: The \$1,200.00 to Daniel A. Knapp; \$1,054.94 to M. L. Hovey and Anna L. Hovey. Of the \$1,200.00 to Mr. Knapp he testified \$400.00 represented rent due Mr. Knapp from Mr. Heath.

The Witness: That is correct.

The Referee: And \$800.00 was on the fee?

Mr. Knapp: Well, if that is the way your Honor puts it.



(Testimony of Daniel A. Knapp)

The Referee: I don't want to put any construction of my own on it.

Q. The \$800.00 was in addition to the rent?

A. That is right. Anyway, it was chargeable against Mr. Knapp.

Q. By Mr. Bowden: Did you read the escrow instructions on the Glendale property before or after Mr. Hovey signed them? A. I did not.

Q. Isn't it a fact, Mr. Knapp, that Mrs. Woodd sent Mr. Garnier to see you?

A. Mr. Garnier never told me that and Mrs. Woodd never [217] told me that and I don't know.

Q. I asked you if it is not a fact?

A. I don't know whether it is a fact or not. She never told me so.

Q. You knew Mrs. Woodd was a long time friend of Mr. Garnier, didn't you? A. I did not.

Q. In whose name does the Hobart property now stand?

A. It stands in the name of—is the record here? I have seen your deed to the name of Melanie Douillard Woodd.

Mr. Bowden: I would like to offer in evidence, if the Court please, a grant deed dated the 12th of September, 1946, in favor of Louis Alfred Douillard, Sr., an unmarried man, which is identified in the files—strike that—I would like to offer in evidence a grant deed dated the 11th day of September, 1946, in favor of Louis Alfred Douillard, Sr., and executed by M. L. Hovey, Anna L. Hovey, and marked in these proceedings as Creditors' Exhibit 1.

We would also like to offer in evidence—

(Testimony of Daniel A. Knapp)

Mr. Knapp: That was what date?

Mr. Bowden: That is the 11th of December, 1946 and acknowledged the same day.

Mr. Knapp: Before whom?

Mr. Bowden: Alfred Price MacNair, a Notary Public; and I would also like to offer into evidence a grant deed in favor of Melanie Selena Woodd, executed by Louis Alfred [218] Douillard, Sr., dated September 12, 1946; do you want the Notary on that?

Mr. Knapp: Yes.

Mr. Bowden: W. W. Robinson, Notary Public.

Mr. Knapp: And for what consideration?

Mr. Bowden: The 12th day of December, 1946, the deed states "No U. S. Revenue stamps are to be affixed to this deed, as the consideration thereof is less than a hundred dollars," the last deed I referred to is marked in this proceeding as Creditor's Exhibit 2.

The Referee: That will be received. Just let me have them, please. Were they both offered as one exhibit?

Mr. Bowden: No, your Honor, two separate exhibits.

The Referee: This will be Trustee's 2 and 3.

Q. By Mr. Bowden: When did you first learn, Mr. Knapp, that the Hobart property had been deeded back to the bankrupt?

A. Had been deeded back to whom?

Q. The bankrupt?

A. Oh, about three weeks ago, I think; I think it was on Friday about three weeks ago.

Q. Now, up until the 15th—I will withdraw that. Now, up until September the 12th, 1946, had you had any conversation with Dr. Hovey regarding the Hobart

(Testimony of Daniel A. Knapp)

property or the Glendale property since the time the escrow was opened up for the sale of the Glendale property? [219]

A. Yes, some conversation with him about the money that was received, the \$1,200.00 that was received there.

Q. No, about the Hobart property?

A. No; the only thing, the only conversation relative to that, and I don't know when it was, was to the effect that the moneys received from the rentals were to be used to pay off an incumbrance and Mrs. Woodd was to have the use of an apartment for the purpose or rather in consideration of collecting the rent and keeping the place up.

Q. I think you are getting confused; that conversation occurred before the sale of the Glendale property, didn't it?

A. We have talked about it since that time.

Q. You have? A. Yes.

Q. Did you talk to him about selling the property, the Hobart property?

A. I have—I think there has been some talk of it, but merely to ask him whether he thought the time was ripe for the selling of it and whether he knew anything about what it was being offered for; words to that effect. I don't recall, though, definitely, what was said about it, but I do have that recollection.

Q. Had you had any conversation with Dr. Hovey about making a deed to the bankrupt's nephew, Louis Alfred Douillard?

A. Yes, I had a conversation with him after the deed was made. [220]



(Testimony of Daniel A. Knapp)

Q. But not before? A. No.

Q. Did you have any conversation with Mr. Douillard before the deed was made?

A. No, I never have had a conversation with him.

Q. You set forth in your verified answer, Paragraph XIII, as follows: "That on or about September 11, 1946, the said M. L. Hovey executed a grant deed, of record, to one Alfred Louis Douillard, Sr., as grantee, for the sum of \$500.00, and that the said Louis Alfred Douillard, Sr., at the time of the execution of said grant deed, well knew that the said property at that time had a value in excess of \$5,500.00, and well knew that M. L. Hovey was the trustee thereof and it was intended to be a conveyance of the trustee interest only by said M. L. Hovey."

Where did you get that information?

A. Right here in this court room from Dr. Hovey's testimony.

Q. That is all the information you had?

A. That is all.

Q. You didn't talk to Mr. Douillard? A. No.

Q. Do you know that Mr. Douillard testified here that he paid \$500.00 full consideration for the property?

A. Well, I heard it.

Q. Then you knew he didn't know about the trusteeship, [221] didn't you?

A. I knew he must have known about the circumstance; he could not have helped but know it.

Q. What do you contend now; that this is your property?

A. Certainly, it is held by the trustee and in the state court I immediately moved to have a trust declared upon it and determination of the trust.

(Testimony of Daniel A. Knapp)

Q. Have you started a suit in the state court?

A. I have not, because I am waiting for a conclusion of your petition.

Mr. Bowden: That is all I think at the present time.

Mr. Knapp: May I examine the witness?

The Referee: Yes, or you may make a statement if you so desire.

Mr. Knapp: All right. It will be to the same effect. The conversation with Mrs. Woodd about the 10th of April, 1940 was had upon the assumption that a written judgment would be entered in favor of the plaintiff in that action; the Douillard, and against Mrs. Woodd, and it was asked if Mrs. Woodd in the course of the conversation—whether or not in the event that that took place and attachments were made upon the properties held by her, she would have any money to pay her attorneys; she said not; we proceeded to gamble upon the theory that we might be able to get our fees by moving in the case at that time, a friendly case against her, and attaching, and we intended that the fees should be [222] fixed by the court. In September, I think, of that same year, Mrs. Woodd wrote a letter or two, in which she stated that she would be glad to recognize an indebtedness of \$4,000.00. Mr. Martindale's position in this case arose in this way: When we told her we were going to bring a friendly suit in the name of Dr. Hovey as plaintiff, she said, "Well, who will be my attorney."

Mr. Heath or I, one or the other, said, "We don't know, get any attorney you want to get but get one you want to rely upon—we cannot advise you"; later she secured Mr. Martindale and stated that the reason she did so was because she had known him for a long time



(Testimony of Daniel A. Knapp)

and had perfect confidence in him. I had no conversation personally with Mr. Martindale at any time during this case, and I believe not otherwise, that is, I am referring to the Hovey case. We were not on good terms. I do not know where his office was; I do know that at one time he had an office, he stated, at another part of the Black Building, where my office was, but I do not know where his office was during the period of this case. Mr. Heath asked me upon an occasion after the attachments were made and execution secured in 1941 whether there was any need in my estimation of hurrying the sale of the properties and I told him so far as I could see in connection with it the properties were paying off the encumbrances and there was not anything besides that until there was an opportunity of finding a worth while buyer there was no use [223] of executing, there was no hurry to execute, and he said, "I will watch things and as soon as I think it desirable I will run an execution." There was never any conversation at any time relative to the progress of the Douillard case then on appeal, because we considered that the attachments that had been rendered gave us precedence over any possible execution that might ensue from that case. The same matter that is taken up here was taken up in the Emil A. Douillard versus Smith, in the Glendale property, where judgment was rendered by Judge Stutzman forever attacking title in that property; there was an appeal in that case and finally a petition for hearing in the Supreme Court by Mr. Clements, Mr. Austin and Mr. Helmick. I have that petition before me and it contains the decision of the Appellate Court; I desire to introduce this in evidence.



(Testimony of Daniel A. Knapp)

Mr. Bowden: We object to it on the ground that it does not tend to prove or disprove any of the issues in this case.

The Referee: I will mark it Respondent's 1.

Mr. Knapp: I now call the Court's attention to the fact that upon the 18th day of April, 1944 there was delivered to Mr. Heath, then acting for M. L. Hovey, a deed, a Sheriff's deed, covering Lot 11, Tract 314, as per map recorded in Book 14, pages 122, 123 of Maps of Los Angeles County Recorder, the same referring to what is known as the Glendale property. That deed was recorded in Book No. 21922, page 71, and the deed was forwarded back to our office and has [224] remained there ever since. Instead of introducing it in evidence I would like to read it in evidence or have it—

The Referee: We will take a certified copy.

Mr. Knapp: All right.

The Referee: Or you can produce one and substitute it for the original.

Mr. Knapp: All right. I also call the Court's attention to—

Mr. Bowden: Do you want to offer that then, Mr. Knapp?

Mr. Knapp: Yes.

Mr. Bowden: With the understanding it can be withdrawn upon the substitution of the photostatic copy?

Mr. Knapp: Yes.

The Referee: That will be the order. That will be Respondent's 2.

Mr. Knapp: I also call the Court's attention to a deed, the 18th day of April, 1944, by E. W. Biscauliz, Sheriff

(Testimony of Daniel A. Knapp)

of Los Angeles County, to M. L. Hovey, covering the South 108 feet of Lot 8, Zahn Tract, as per Map recorded in Book 12, page 127 of Maps of Los Angeles County, known as 5255 Virginia Avenue, Los Angeles, and I will state in this connection that this deed was secured by Mr. Heath, that it was caused to be recorded by him in Book 21533, page 36, Officials Records of Los Angeles County, and Mr. Heath ordered it returned to our office, where it has been ever since.

The Referee: I will receive that, Respondent's 3. [225]

Mr. Knapp: I presume that the presumption of law, that a sale was made in accordance with the requirements of the law; if not I have the necessary publication and posting of the property.

The Referee: I assume we may assume that it was done according to the law unless the Trustee wants to point out wherein it was not.

Mr. Knapp: I will state further in connection with this that Mr. Heath and I after the bidding in of those properties, considered that the debt of Mrs. Woodd to us was wiped out to the full extent of the purchase price paid for the two properties, and from that time on we, through our trustee, Mr. Hovey, owned these properties. The comment that the debt of Mrs. Woodd was wiped out as we saw it, by the sale of the Virginia Street property, which was \$1,775.00, with the Glendale property \$1,250.00, leaving a balance of \$1,750.00, \$1,250.00 and \$1,000.00, which is the amount that Mr. Heath meant in his will.

Mr. Bowden: I move to strike that last portion of the answer on the ground it is a conclusion of the witness. It is not the amount Mr. Heath mentioned in his will.

The Referee: Overruled.

(Testimony of Daniel A. Knapp)

Mr. Knapp: That is all the statement I have to make.

Q. By Mr. Bowden: Mr. Knapp, you say that you considered she still owed you \$1,000.00. What was the amount of the judgment, \$4,000.00? [226]

A. The indebtedness was \$4,000.00. I consider that \$3,000.00 has been wiped out.

Q. It is \$3,025.00, is it not?

A. \$3,000.00 has been wiped out; there is added costs in connection there and there is interest running.

Q. Didn't you get \$450.00 from the County Clerk that was being held by him from condemnation proceedings affecting Mrs. Woodd's property?

A. I do not know anything about that.

Q. You don't remember receiving that?

A. No, I don't. I remember there was something about it but I don't know what it was.

Q. Now, besides these two properties you executed on a trust deed, did you not, belonging to Mrs. Woodd?

A. You are referring to the

Q. Yes.

A. It has been finally determined in favor of Mr. Clements and which we now have the honor of paying, including all those court rates.

Q. Now, all of the property you have referred to as belonging to Mrs. Woodd was either received by her from her mother's estate or purchased by her with money received from her mother's estate?

A. I don't know the origin of this property.

Q. Well, you represented her in this matter.

A. No, I never represented Mrs. Woodd except in the [227] matter of Douillard versus Woodd.



(Testimony of Daniel A. Knapp)

Q. But you do know when you finally executed on the Yarborough note you then had all of the property Mrs. Woodd owned in the world?

A. No, I do not. I know she said she had no property but that is all I know.

Q. In other words, the net result of your services to Mrs. Woodd in defending her in a \$7,500.00 lawsuit was to take every bit of property she had in the world?

A. Mrs. Woodd was paying for other debts that had accumulated many years, at least \$2,500.00.

Q. What did she owe to you, Mr. Knapp, other than for services in the Douillard case?

A. I don't consider—unless the Court overrules me, that the question asked as to what we were taking from Mrs. Woodd otherwise had anything to do with it. The question is: What were our services worth? It took us nearly ten days of trial, we had worked on the case almost a year, Mrs. Woodd was very excitable and I would say she came in hundreds of time for conferences. We had a motion for a new trial and we had another motion, I have forgotten what it was now, we then had a transcript and we had to present a motion to correct the transcript and it took weeks and weeks to correct it and finally the brief to write upon appeal; taking in all nearly three years of it, I think we earned our money double.

The Referee: Yes, I think we needn't pursue that any [228] further. It is rather argumentative. In other words, Mr. Bowden's observation, everything she had in the world she lost to you two gentlemen because of your trying to defend her unsuccessfully in the litigation—that is just his opinion; I don't know that it affects this case.

(Testimony of Daniel A. Knapp)

Mr. Bowden: Now, after you told Mrs. Woodd you were going to file a friendly suit against her for fees, you continued to represent her on the appeal in the Douillard matter, didn't you?

A. Yes. We asked her at the time if she desired to continue our services and she said she certainly did, that she owed us so much money it was only a question of how much she owed us.

The Referee: Now, as I recall having heard the testimony in connection with this phase of the matter in other hearings, I suggest you might get those questions and replies which the reporter took down as a part of this record.

Mr. Bowden: As far as I am concerned, I am willing to stipulate that all of the testimony given subsequent to the reopening of this case may be considered as in evidence if there is no objection.

The Referee: I was thinking when this matter was presented to me before, if a record were made of it as to what they did and so forth, I know either Mr. Knapp or Mr. Heath went over that in great deal as to what work was done; it might be more satisfactory just to take all of the evidence [229] we have in this matter which pertains to this subject matter and consider it in evidence here.

Mr. Bowden: If there is no objection I will offer it all, together with all of the exhibits that are pertinent to the matter here.

The Referee: It will be received; however, that part of it which is not material and is on subjects not allied to this we can disregard; so all of these other discussions and testimony on this matter will be received. I am more



(Testimony of Daniel A. Knapp)

concerned with the latter part of this. I think we have the factual chronological picture here of the case and the records and executions. I would like to get more of the latter part of this controversy, that is, the giving of these last deeds, and I would like to have Mrs. Woodd, if possible, tell what she can here in connection with this reference on the will.

Mr. Bowden: I would like to examine Mrs. Heath about that too but I understand Mrs. Heath is not here.

Mr. Knapp: No, she is sick.

Mr. Bowden: How long do you think she will be sick?

Mr. Knapp: I don't know. I know I called her Saturday in answer to your call and the daughter informed me she was ill but asked me where the hearing would be held and I told her but she is not here today, so I conclude her illness has continued.

Q. By the Referee: Mr. Knapp, from your knowledge and [230] your former connection with Mr. Heath and also your representation in the probate estate, what does Mrs. Heath know about this Woodd transaction?

A. Absolutely nothing, except general statements made by Mr. Heath to her from time to time; it is all hearsay. Everything else was turned over to me.

The Referee: I suggest that be deferred to the end of the hearing and if it is absolutely necessary she may come in. We would get the picture more definitely, wouldn't we, from you than from her? In other words, she would not add anything to this.

Mr. Knapp: Not a thing; she turned everything over to me.



(Testimony of Daniel A. Knapp)

Q. By Mr. Bowden: Do you intend to include this property in the order to show cause in your appraisal in connection with the Fred Heath estate?

A. Yes, indeed; Mr. Heath considered it was his property.

The Referee: Well you have an answer to your question. Mr. Knapp has stated he intends to include it in the Heath estate.

Q. By Mr. Bowden: Can you tell us whether or not the mortgage has been paid off on the property?

A. You are referring to what property?

Q. Hobart.

A. I think not. I think it has been reduced greatly [231] but not paid off. The bank is a party to this hearing and they have not appeared—

Mr. Knapp: It is nearly \$3,000.00; \$2,500.00 or something like that.

Mr. Bowden: That is all.

The Referee: Next witness.

Mr. Bowden: I will call Mrs. Woodd.

MELANIE DOUILLARD WOODD,

having been previously duly sworn, on oath testified as follows:

Q. By Mr. Bowden: Mrs. Woodd, you are the bankrupt in this proceeding? A. Yes, sir.

Q. Where do you live?

A. 5255 Virginia Avenue.

Q. 5255 Virginia Avenue? A. Yes, sir.

Q. How long have you lived there?

A. Almost ten years.

Q. Continuously? A. Yes, sir.

(Testimony of Melanie Douillard Woodd)

Q. Do you claim to own that property at the present time?      A. I do.

Q. Where did you obtain your title to that property?

A. Through Louis Douillard. [232]

Q. How long ago?

A. About two months ago, I guess.

Q. He gave you a deed, did he?      A. He did.

Q. The deed that has been talked about here?

A. Yes, sir, a grant deed.

Q. Who did he get his deed from, do you know?

A. You ask him.

Q. Well, I will in due time. Now, as I understand you testified previously, that you secured two blank deeds and went to the bank and had them made up?

A. No, I had two deeds and I took them down. I had, I think, one deed, I may have had two, I don't know, and I took them down to the bank, before I had them recorded. Louis gave me his deeds to have them recorded and I took them down to the bank and had them look over them and they were not rightly filled out.

Q. When was that?

A. So the bank made some more—I think I had better let the bank speak, they are here.

Q. Anyway, they made the deeds the way you wanted them?

A. The way they should be; not the way I wanted it.

Q. That was about September?

A. I think so.

Q. What did you do with the deeds when you got them [233] from the bank?

A. I took it back to Louis Douillard.

(Testimony of Melanie Douillard Woodd)

Q. What did he do with it?

A. I don't know.

Q. Is that the deed in which he was named as the grantee? Which deed are you talking about?

A. Yes, what are you talking about?

The Referee: Well, let's start in at the first, in connection with the form of the deed. You start right in with the first now and say where you went and what and how many forms you got and what you did with them and then going back and so forth.

A. Louis Douillard gave me two deeds filled out.

Q. Now, is that the first time?

A. Yes, sir.

Q. You didn't go to the bank and get two forms for him?

A. No, he gave me these two forms already filled out by some friend of his.

Q. One was a deed to him and the other was a deed from him to you?

A. I think so; I don't know if those two were the same day even.

Q. Well, you say he gave you two forms, were they two separate forms? A. Yes, sir.

Q. What were they? [234]

A. One was from—

Q. Hovey to him?

A. Yes, sir, I guess so, and from him to me, and then I took them to have them recorded.

Q. Where did you take them?

A. Before I went to have them recorded I took them down to the loan and trust department in the Security Bank, where they hold the mortgage, Mr. Dick, and I



(Testimony of Melanie Douillard Woodd)

showed him these deeds—maybe not both of them but one—and he said it was not filled out right and he gave me a couple of blanks from the Security Bank and had the girl fill out the legal.

Q. So she made two more deeds?

A. Yes, sir, but she never made them in the first place, just this—she filled in the legal.

Q. Then she gave them back to you?

A. Yes, sir, and I took them and had stamps put on them.

Q. They were not signed when you took them?

A. No, sir.

Q. Then what did you do?

A. Then I took them home again to Louis.

Q. What did he do with them?

A. I don't know. Of course I know by hearsay.

Q. You took them to him and told him to sign that new form? .      A. Yes, sir.

Q. Then did the deeds come back to you? [235]

A. Yes, sir.

Q. Who gave them back to you?

A. Louis Douillard.

Q. Then what did you do?

A. I took one down and had the stamps put on here at the Post Office and had one recorded and the other I held.

Q. Did you take the other one down to the Post Office to find out if any stamps should go on it?

A. No, I took it to a lawyer.

Q. What lawyer?

A. Mr. Stewart, five or six weeks later, though.

(Testimony of Melanie Douillard Woodd)

Q. Then you recorded the first one?

A. Yes, sir, six weeks before that.

Q. From Mr. Hovey to Louis Douillard?

A. Yes, sir.

Q. Then you kept the other deed five or six weeks?

A. Yes, sir, I just put it in my trunk.

Q. Then what next happened?

A. Well, the little boy got into some trouble and it frightened me and I took my deed down and told Mr. Stewart all about it and said I wanted to put it through and he said that would be the best thing to do, and he looked it over and said it was all right, and I went and recorded it.

Q. Now that seems to show what actually happened in the deed. Do you want to add anything to that, Mr. Bowden, or ask any questions? [236]

Mr. Bowden: No, your Honor.

The Referee: That seems to be the way the deeds were handled.

Mr. Stewart: May I cross-examine the witness?

The Referee: I believe we will take a short recess now and then decide whether or not we should have a cross-examination on this point or wait until we get through.

(Whereupon a recess was had.)

The Referee: Mrs. Woodd, will you resume the stand?

Mr. Stewart: If your Honor please, I wonder if at this time we might have the indulgence of the Court and call a witness out of order?

Mr. Bowden: I have no objection.

The Referee: All right.

A. C. DICK,

being first duly sworn, on oath testified as follows:

Q. By Mr. Stewart: Mr. Dick, what is your position?

A. I am in charge of the trust real estate loans.

Q. At what bank? A. Security-First National.

Q. And what branch? A. Sixth and Spring.

Q. In connection with that, do you have charge of certain files of the bank that have to do with a loan on property described as 108 feet of Lot 8 of the Zahn Tract? A. I do. [237]

Mr. Bowden: May I ask, this is the bankrupt's witness, isn't he?

Mr. Stewart: He is the bankrupt's witness, yes.

Q. By Mr. Stewart: And in connection with that property, you made a new loan on that property, did you not? A. We did.

Q. There was at that time a loan on the property?

A. There was.

Q. And your records, I believe will show, will they not, that in connection with the new loan the signatures required or taken were the signatures of M. L. Hovey and Anna L. Hovey, taken on the note, and then there was an endorsement signature of Melanie Woodd taken as guarantor on that?

A. M. L. Hovey and Anna L. Hovey executed the note and the endorser was Melanie Woodd.

Q. What was the date of that new note?

A. December 26, 1944.

Q. And do you know why the name of Melanie D. Woodd was taken as an endorser in that matter?

A. Well, it was our custom—Melanie D. Woodd executed the former loan and then when M. L. Hovey came



(Testimony of A. C. Dick)

in, it was our custom to pick up the former maker if we can and if she is willing, to make her the endorser or guarantor, if she is willing, and if she was not, we would have to investigate the loan to Mr. Hovey. [238]

Q. You brought that to the attention of Mr. Hovey?

A. I did.

Q. And the endorsement was secured?

A. The endorsement of Melanie Woodd was secured.

Q. Do you know what explanation, if any, was given to her as to why she was signing as endorser?

A. No.

Q. Do you recall whether you or Dr. Hovey talked to her?

A. I don't recall, it may have been Dr. Hovey, I don't recall, but when Dr. Hovey first came in and asked for the increase of the loan, I probably at that time said, "How about getting Melanie D. Woodd as endorser or guarantor of the note?"

Q. There was no matter of the title to the property at that time that showed the title to Melanie Douillard Woodd or anything of that kind?

A. No, the title showed in the name of M. L. Hovey by deed dated April 18, 1944.

Q. Do you know how payment was made out of the escrow, or the proceeds of the new loan?

A. It was made to M. L. Hovey and Anna L. Hovey and Melanie D. Woodd.

Q. Do you know how that was handled?

A. By the trust department voucher and the check was passed over, I believe, to M. L. Hovey; I don't recall — [239] yes, we mailed it to M. L. Hovey and Anna L.

(Testimony of A. C. Dick)

Hovey on 1675 West Washington Boulevard, on February 2, 1945.

Q. By Mr. Bowden: Do you know what was the course of that check after it was given by you?

A. The check was endorsed, "Pay to the Order of M. L. Hovey, By M. L. Hovey, Anna L. Hovey and Melanie D. Woodd," and bears our stamp on it, the Washington Branch of the Security Bank.

Q. By Mr. Stewart: And the bank's stamp endorsement on it as you say indicates a deposit of the whole?

A. I could not say whether that was a deposit or whether it was just cashed out there, but evidently it was at that branch, whether it was deposited or cashed.

Mr. Stewart: That is all.

The Referee: How much was this check?

A. \$1,017.13, it was an increase over the former loan we had.

Q. Do you find that Mr. Knapp's or Mr. Heath's name is on the check?

A. I never knew anything about Mr. Knapp or Mr. Heath.

Q. It would appear from the check it had been paid to Dr. Hovey? A. Yes, sir; I have it here.

The Referee: May I see it, please?

(Witness hands check to the Referee.)

Mr. Stewart: As to the form of the endorsement on that [240] check, whether deposited, cashed or finally handled, was by Hovey, wasn't it?

Mr. Bowden: I will object to that as calling for a conclusion?

The Referee: Dr. Hovey can tell us how it was handled, the endorsement is "Pay to the order of M. L.

(Testimony of A. C. Dick)

Hovey," signed "M. L. Hovey, Anna L. Hovey and Melanie D. Woodd." \$1,017.13. I will return this to you.

Q. By the Referee: Do you recall when they came in to make the extension of the loan?

A. The renewal increase?

Q. Yes, you don't have any personal knowledge of it, do you?

A. I do not, except it must have been around November 27, 1944, because that is when I submitted it to our committee.

Q. In other words, he owed you that money at that time on the old loan?

A. They owed us on the old loan the difference between that check and \$2,800.00, less the escrow charges.

The Referee: I am looking at her schedule, filed August 29, 1945.

The Witness: Here it is, they owed us \$1,770.73 plus interest at 5½ per cent from December 15, 1944.

Q. What is the condition of this particular balance or loan now; has it been paid? [241]

A. As of December the 15th, the January just passed by—I neglected to get that January—but as of December the 15th the balance is \$2,377.00.

Q. By the Referee: And that is an obligation of Melanie Douillard Woodd?

A. She is the endorser.

Q. Well, she is really the principal, isn't she? Do you have a separate contract of guarantee?

A. Yes, sir.



(Testimony of A. C. Dick)

The Referee: I see. I don't believe she has scheduled that in her schedules which were filed August 29, 1945; in fact, it is not scheduled. Had that been scheduled and set up that would have opened an inquiry that might have been conducted—I don't know that there would have been any different result; but the schedules are not true, they do not truly reflect the payments owing by the bankrupt.

Mr. Stewart: Might I say this: At the time the matter was brought to my attention after this hearing that brought this check before the Court, Mrs. Woodd seemed to know nothing about this obligation and didn't know how she had her name on it, and I investigated and found out it was there by reason of the process of the bank.

The Referee: I will return this to you. Any other questions of this witness?

Mr. Bowden: I would like to have this note and check offered in evidence. I presume the bank will supply us with [242] a photostatic copy rather than put the original in.

The Witness: Yes, sir; that is right.

Mr. Bowden: As the Trustee's next in order.

The Referee: All right. I will receive the photostat copy.

Mr. Bowden: May I look at the deed of trust? Do you have your instructions there in connection with the escrow?

(Testimony of A. C. Dick)

Mr. Bowden: The witness is showing me escrow instructions in connection with this loan, or a copy, rather, is it a correct copy?

The Witness: Yes, and this is the original.

Mr. Bowden: I am reading from the original, it is dated December the 26th, 1944, and signed by Melanie D. Woodd, 5255 Virginia Avenue, Los Angeles, and on the left-hand side M. L. Hovey, Anna L. Hovey, 1675 West Washington Boulevard. I would also like to have these photostat copies kept and received in evidence as the Trustee's next in order. Will you photostat the original?

The Witness: Yes, sir.

Q. Now, do you have a statement showing the disbursement of the fund?

The Referee: Well, the net result would be after the pay-off and costs the balance would be evidenced by a check?

Mr. Bowden: Yes.

The Referee: These matters that are coming in here all will be marked Trustee's 4 and be received; I will clip them [243] together.

The Witness: The check, note and escrow statement?

Mr. Bowden: Yes, the deed of trust is not signed by Mrs. Woodd, is it?

The Witness: No, sir.

The Referee: That is all.

Now, Mrs. Woodd, please.

MELANIE DOUILLARD WOODD,

having been previously sworn, on oath testified as follows:

The Referee: I believe it will be more agreeable, Mr. Knapp, to have all the cross-examination at the conclusion and therefore I will hold your questions in abeyance.

Q. By Mr. Bowden: Mrs. Woodd, do you remember what became of your homestead on the Hobart property?

A. Yes, sir.

Q. What became of it?

A. Mr. Heath gave me \$1,000.00 for my homestead.

Q. When did he give you that? A. Years ago.

Q. Well, when?

A. It has been years ago, before they sold my property, before the property was sold at the Sheriff's sale; somewhere in there.

Q. The property was sold April the 12th, 1943?

A. Yes, sir.

Q. Does that refresh your memory? [244]

A. Well, sometime before that he gave it to me.

Q. How long before?

A. I couldn't say.

Q. Where were you when he gave it to you, the \$1,000.00? A. In his office.

Q. Did he give you a check?

A. No, he gave me bills.

Q. What kind of bills?

A. I think they were fifties or hundred dollar bills.

Q. In a total of \$1,000.00?

A. Yes, sir, \$1,000.00.



(Testimony of Melanie Douillard Woodd)

Q. Did he serve any papers on you before that time or did he just call you in and give you the \$1,000.00?

A. No, he served papers on me and I think took me into court before Judge Vickers, I think that was the name.

Q. Well, were you represented by an attorney then?

A. No, I had no attorney.

Q. Do you know what happened when he took you to court? A. Well, something about the homestead.

Q. What did you do with the \$1,000.00?

A. That was my own private money to do as I wished with.

Q. What did you do with it? A. I spent it.

Q. For what?

A. For clothes and things, maybe doctor bills. [245]

Q. When he gave you this \$1,000.00 in cash, what did you do with it? A. I took it home.

Q. Where did you keep it?

A. In the bureau drawer.

Q. Didn't you put it in the bank? A. No.

Q. Why didn't you put it in the bank?

A. I would not put a nickel in the bank; Mr. Clements had taken \$90.00 of my money, do you think I would put any more in?

Q. So you just kept it in your bureau drawer so Mr. Clements and his clients would not know about it?

A. That is not why I did it, I just kept it so I could do with it as I pleased; no one could have touched that money anyway; it was my homestead money.

Mr. Bowden: I think we have all of the testimony in.

The Referee: I would like to go over this whole matter again. Start right in at the beginning and let's hear

(Testimony of Melanie Douillard Woodd)

about it again today. I think I can get a clear picture of it by hearing it rather than by reading it.

Q. By Mr. Bowden: Mrs. Woodd, you have lived in this property all during the time you were in bankruptcy?

A. Yes, sir.

Q. And all during the time Mr. Knapp and Mr. Heath claimed to have owned it? [246]

A. Yes, sir.

Q. And you have paid no rent during that period of time?

A. No, I lived there and took care of the place.

Q. And you collected the rent on the premises?

A. Yes, sir.

Q. And you made the payments on the trust deed every month?

A. Yes, I would bring it down.

Q. By the Referee: And you took the money in to Dr. Hovey?

A. Yes, and he would give me a check and I would take the check down to the bank.

Q. Now, at the present time you own this property, that is your contention?

A. Yes, sir.

Q. What is your view of Mr. Knapp's position that he owns it?

A. I cannot see that he owns it now.

Q. Now, when Mr. Heath wrote his will, the will that they are now probating, apparently in court, it says: "Mrs. Woodd owes me about \$1,000.00 represented in the Hovey versus Woodd judgment." Now, that was on April 22, 1943; after that date has he received his \$1,000.00?

A. No, he has not.

Q. What did he mean; what did you owe him on April 22, [247] 1943?

A. I don't know, I owed him money long before that; I had divorce cases and things like that and the Douillards gave me so much trouble all through the years.

(Testimony of Melanie Douillard Woodd)

Q. Now, on April the 22nd, 1943 the Hovey judgment was against you, was it not? A. Yes, sir.

Q. Now, in addition to that Hovey judgment which was some \$4,000.00, did you owe him another \$1,000.00? Do you owe him \$1,000.00 now?

A. Not that I know of.

Q. In other words, whatever it was you owed him was in the Hovey judgment?

A. Oh, I should think so.

Q. Was there an understanding that when, say as of April 22nd, 1943, that is when Mr. Heath made the statement, wrote it out in his own handwriting, was there an understanding that if and when he received for his part of this Hovey judgment another \$1,000.00, that that would satisfy him?

A. I don't remember anything like that.

Q. What is now your explanation as to his statement of April the 22nd, 1943, that you owed him about \$1,000.00, represented in the Woodd versus Hovey judgment? A. I would not know.

Q. Now, you heard Mr. Knapp state his claim to this property. Do you consider that he has been paid? [248]

A. Mr. Knapp has been paid?

Q. Yes.

A. No, I don't feel that he has been paid.

Q. How much does Mr. Knapp, in your opinion, still have coming?

A. I would say more like \$1,000.00 to Mr. Knapp. He fought all through this thing; Mr. Heath was sick a great deal.

Q. In other words, if you owed anything to anyone, you would say \$1,000.00 to Mr. Knapp and not to Mr. Heath? A. Yes, I would say that.



(Testimony of Melanie Douillard Woodd)

Q. Did he do most of the work?

A. Yes, your Honor, Mr. Heath was sick all through there and Mr. Knapp fought all of the way through this.

Q. Was it your thought that if Mr. Knapp got this \$1,000.00 he should not make this demand against you and the property should not be his?

A. I don't know what to say.

Q. Well, he is contending you have his property and you have no right to it.

A. I would give him another \$1,000.00.

Q. Do you think that would be fair?

A. Yes, sir.

Q. But he contends he should have all of it.

A. Yes, I know he does.

Q. That is what he contends. [249]

A. Yes, I know.

Q. And you dispute that contention, that he should not have anything more than \$1,000.00, is that it?

A. Yes, sir.

Q. Well, the thing is very confusing and I want you to tell us about it.

A. I don't know. I would have to talk to Mr. Knapp about it.

Q. You seem to be in opposition here. In other words, the property is in your name? A. Yes, sir.

Q. It was bought by your nephew and he gave it to you after he bought it? A. Yes, sir.

Q. So you can claim it is yours?

A. Yes, sir, and I don't want to let go of it.

Q. On the other hand, Mr. Knapp is here claiming it is his and you don't have any interest in it?

A. I feel I have got an interest in it.

(Testimony of Melanie Douillard Woodd)

The Referee: Well, I suggest you go ahead on the matter, Mr. Bowden, maybe we can get a little clearer picture of it. I would like to go through this transaction again on the purchase by the nephew; where the deed was secured and how and what was said.

Q. By Mr. Bowden: When was the first time you talked to your nephew about getting this property in your name, Mrs. [250] Woodd?

A. I didn't talk to him about getting it in my name.

Q. Never? A. No.

Q. When was the first time you found out he had the property in his name?

A. On September the 11th or 12th.

Q. Then didn't you talk to him about making a deed to you?

A. No, he made it of his own free will.

Q. And he gave you both deeds at the same time?

A. Yes, I think so, one might have been one day and one the next, but right in there.

Q. What did he say when he gave you the deed?

A. His deed to me?

Q. Well, you say he gave you both deeds?

A. He told me to record one and the other one for me to hold in case he was killed or hurt and something and I would have a home.

Q. In other words, you would record the deed that put the property in his name, the deed from Hovey to Douillard, so it would be of record? A. Yes.

Q. Then you were to keep the deed from him to you to hold it, so if anything happened you could record it?

A. That's right. [251]

(Testimony of Melanie Douillard Woodd)

Q. Then you say you recorded it about a month later?

A. Yes, when the little boy got into some trouble.

Q. What trouble was going to affect the title to this property?

A. Well, I felt my nephew would be sued on account of the trouble of the little boy.

Q. Was he sued?

A. I don't know; I will have to let him tell about that.

Q. You have not talked to him?                      A. No.

The Referee: I think it is clear. There was some trouble coming up and you were afraid he might lose the home?

A. Yes, sir, that is right, and we don't sit and talk about these things, I have been sick.

Q. By the Referee: Well, now what about this—if you think Mr. Knapp would have another \$1,000.00 coming, then if that is the case there is something that still should be paid to him, even under your theory, or did he get the \$500.00 from Mr. Hovey?

A. I don't know that.

Q. How is Mr. Knapp going to get his money if he should have another \$1,000.00, if he has not been paid to that extent, how is he going to get his \$1,000.00?

A. I don't know.

Q. Apparently there is some complication in connection [252] with this \$500.00 that Dr. Hovey took, apparently that didn't go on to Mr. Heath, did it?

A. I don't know what dealings Mr. Hovey had with Mr. Knapp.



(Testimony of Melanie Douillard Woodd)

Q. Do you have any intention or understanding that you in the future would balance up Mr. Knapp's account or pay him any more or anything of that sort?

A. No, sir, that is what I went through bankruptcy for; I could not pay these people.

Q. On the other hand, you think he is entitled to it?

A. Well, if anyone is, I think it is Mr. Knapp.

Q. Well, do you feel he should or should not?

A. He should.

Q. How is he to be paid?

A. Well, I would have to borrow some money somewhere to pay it.

Q. He did most of the work, did he?

A. He did, yes, sir. It was not his fault that this cost me so much; the Douillards and their lawyers kept pressing.

Q. Well, do you have any money to pay him?

A. No; I could mortgage the property.

Q. Was that what you intended to do to take care of his account?

A. I had not thought of it at all.

The Referee: I see. Any other questions? [253]

Q. By Mr. Bowden: You paid nothing for the deed from your nephew to yourself?

A. Nothing.

Q. He just gave you that?

A. He gave me that.

Q. That is the reason you didn't put any internal revenue stamps on it?

A. That is right.

Mr. Bowden: That is all.

The Referee: Are there any questions by Mrs. Woodd's counsel? Do you have anything else to bring out?

Mr. Stewart: Your Honor, in connection with the other transaction—the documents from the bank.

(Testimony of Melanie Douillard Woodd)

The Referee: Oh, yes.

Q. By Mr. Stewart: Mrs. Woodd, do you recall anything about the new loan Dr. Hovey made on that property down there wherein you seem to have signed something? A. Yes, I do.

Q. Do you recall what it was you were asked to sign?

A. Yes, I had to sign something—I don't know; I signed whatever it was.

Q. By the Referee: Well, the bank asked you to do that, did they? A. Yes, sir.

Q. Because you were on the other note? And you didn't get any of the money? [254]

Q. Apparently you went to Dr. Hovey's office and signed the check we have? A. Yes, sir.

Q. Do you know what happened to the money?

A. I know it by hearsay, what he said.

Q. What did he say?

A. That it went on the Yarborough note; Mr. Clements has the money or will have it.

Q. The \$1,770.00 went to Dr. Hovey?

A. Yes, and Dr. Hovey put it up for this note, to keep fighting this Yarborough note, which was my property once.

Q. What did Dr. Hovey have to do with that?

A. I signed over the trust deed as partial payment.

Q. Now, we have had an indication that Dr. Hovey was acting as the trustee or agent for Mr. Heath and Mr. Knapp, is that your idea of his position?

A. Yes, I knew that.

Q. When you dealt with him, you assumed you were dealing with Mr. Heath and Mr. Knapp? A. Yes.

(Testimony of Melanie Douillard Woodd)

Q. It really was not his money, but it was there?

A. Well, I thought when he bought it at the Sheriff's sale that he bought that land, that he was the legal owner and it was Dr. Hovey this and Dr. Hovey that.

Q. Yes, but he came into the picture as the trustee, merely standing for Mr. Heath and Mr. Knapp? [255]

A. Yes, sir.

Q. In other words, it was really their money owing to them and not to Dr. Hovey, and he acted as the plaintiff?

A. Yes, sir.

Q. Did you regard him as such?

A. Well, I didn't pay any attention to that.

Q. I just want to know if you realized his position?

A. I knew he was the assignee, yes, sir.

Q. By Mr. Stewart: In that connection had you heard of some dealings also between Mr. Heath and Dr. Hovey, some business transactions, wherein Mr. Heath may have owed Dr. Hovey something?

A. Yes.

Q. And that was also involved in the handling of these affairs?

A. That's right. He told me he owed Dr. Hovey \$1,000.00 and \$200.00 attorney's fees—I don't know exactly.

Q. By the Referee: Mr. Heath told you he owed Dr. Hovey \$1,000.00 and \$200.00 for attorney's fees?

A. That is what I thought he said.

Q. Dr. Hovey is not an attorney, is he?

A. No; maybe he mentioned he had to have an attorney for some of these fights. Dr. Hovey had to come up again and again, I don't know.

Q. Now, the estate of Mr. Heath, according to what Mr. Knapp has indicated—when I said he owned this



(Testimony of Melanie Douillard Woodd)

property— [256] I don't know, apparently he contended three-eighths was owed to him and five-eighths to the Heath estate; in other words, the Heath estate here has the same position as has been expressed by Mr. Knapp as to his position; what is your contention with respect to that? How about the Heath estate, do you still owe them any money?      A. The Heath estate?

Q. Yes.      A. I don't feel that I do.

Q. If there was \$1,000.00 owing, you feel that he has in the past been paid?      A. Well, I will tell you.

Q. Well, start in now; you contend you don't owe them anything?      A. Yes, sir.

Q. And if you did owe them money in the past; and you did, didn't you?

A. Yes, and Mr. Heath owed me money.

Q. And you contend that has been paid?

A. I feel—Mr. Heath bought a piece of land from me. 1732 South Vermont, he and his wife, for \$7,500.00, and I had an equity of \$500.00 in it and he bought it from me and he collected the rent for a year but he never paid me the \$500.00.

Q. Was that after this \$4,000.00 judgment against you?

A. Yes, sir, but that had nothing to do with it; this [257] was a side issue; he bought this piece of land and collected the rent but he never paid me.

Q. He said he would give you how much?

A. \$500.00.

Q. So you gave it to him and he collected the rent for a year?

A. Yes, sir. And then let it go by default.

(Testimony of Melanie Douillard Woodd)

Q. How much were the rents?

A. I think \$80.00 a month.

Q. Around \$1,000.00, if he collected it for a year?

A. Yes, sir.

Q. That would be \$1,500.00; \$500.00 and \$1,000.00?

A. Yes, sir.

Q. And he got that money?

A. I guess so; the bank wrote me—

The Referee: I just wanted to know.

A. I think he did.

Q. You contend he got that money and that he settled his claim against you?      A. I would feel that way.

The Referee: Any other questions? Now, you may cross-examine, Mr. Knapp.

Q. By Mr. Knapp: Mrs. Woodd, when was the first time that you knew that Dr. Hovey was selling the Virginia Street property?

A. I didn't know it. [258]

Q. Did Mr. Douillard live in your place in 1940 and '41?      A. No, he never lived with me until now.

Q. Well, you were on very intimate terms with him during that period, were you not?

A. Yes, of course.

Q. You bought him an automobile?

A. I made the payment on an automobile.

Q. And a house?

A. No, no. I never bought Louis Douillard a house; that was for George Douillard.

Q. You bought an automobile for him?

A. I made part payment.

(Testimony of Melanie Douillard Woodd)

Q. And when the trouble came up with the elder Douillard you told him all about it, didn't you?

A. I guess I did.

Q. And later on you told him about the suit by Mr. Knapp and Mr. Heath against you?

A. I guess I did.

Q. And that was brought in the name of Dr. Hovey?

A. I don't know that I said that.

Q. You talked with him frequently about it?

A. Not so frequently; he went to war right after that.

Q. Now, prior to the time of the deed that was made, I think on the 11th of September, 1946, prior to that time you had talked with him about your desire to have that property [259] for your own, the Virginia Street property?

A. No, I had not.

Q. You had not talked with him at all about how you needed it for your old age?

A. No, I didn't.

Q. And there was no expression between you about it?

A. No.

Q. And you knew that he was going over to see Dr. Hovey, didn't you?

A. I knew he was working and helping Dr. Hovey.

Q. Did he tell you about any conversation with Dr. Hovey relative to that property?

A. No, he didn't.

Q. Did you ever talk with him about the value of that property?

A. No, sir.

Q. You never did?

A. No, sir.

Q. Did you ever tell him about how much the encumbrance was on the property?

A. I don't think I did.



(Testimony of Melanie Douillard Woodd)

Q. Did you tell him it was property that was worth seven or eight or ten thousand dollars?

A. No, I did not.

Q. And he never asked you anything about it?

A. No, he didn't. [260]

Q. He never talked with you about the value of it or anything? A. No, he does not.

Q. Then out of a clear sky on the 10th or 11th of January, he just brought over the deed and said, "I bought this property"—

Mr. Bowden: September the 12th, I think.

Mr. Knapp: Yes, September, 1946.

A. Mr. Knapp, I was up at your office in the spring and a big tree fell down—wait a minute—and then I remember the wind came and blew the roof of my house and I came and told you about these things and annoyed you, I guess, and when I came back again and told you another large tree was leaning on the little house and might kill those people, that seemed to annoy you again and you said, "We will sell." You didn't say, "I will sell," and I went home all excited and nervous and told Louis, "It looks as if the place will be sold," and he took it upon himself.

Q. Just a moment, when you told him, "It looks as if the place will be sold," what else did you tell him?

A. Just that.

Q. Did you tell him who said that?

A. Yes, I said Mr. Knapp said it but I didn't tell him Mr. Knapp owned it.

The Referee: You just answer Mr. Knapp in full—his questions. [261]

Mr. Knapp: Go ahead.

(Testimony of Melanie Douillard Woodd)

The Witness: That is all, Mr. Knapp.

Mr. Bowden: I think she had finished her answer.

The Witness: What was it?

Mr. Knapp: You were telling a story of what happened after that.

The Referee: The first conversation was related, that is her trip to your office.

The Witness: I was telling him about the tree falling down.

The Referee: Yes, but the question just before that had to do with the trip to Dr. Hovey's office, that is Mr. Douillard's, tell us about that.

A. I just came home and told him we might be evicted and the place sold and he didn't say a thing about it but he went down to see Dr. Hovey about it?

Q. Why didn't he go to see Mr. Knapp?

A. I don't think he knew Mr. Knapp was the owner.

Q. I thought you said awhile ago in answer to Mr. Knapp's question that you knew Dr. Hovey was only the agent?

A. I did, but I didn't say anything about it.

Q. Did you tell your nephew who lived there in the house?

A. No, I kept saying Dr. Hovey was the owner.

The Referee: All right.

Q. By Mr. Knapp: But you did tell him on the instance [262] of those trees and so forth that Mr. Knapp had said the place was to be sold?      A. Yes.

Q. When was that, about?

A. Well, that was sometime before September the 11th, I cannot tell how long.

(Testimony of Melanie Douillard Woodd)

The Referee: That seems a little inconsistent. Now, you told him Mr. Knapp said the place would be for sale or would be sold and then you just got through saying he didn't know Mr. Knapp had anything to do with it.

A. I didn't say Mr. Knapp said that. I said he said that we will sell it.

The Referee: I thought you told me a minute ago he didn't know anything about Mr. Knapp's connection with the case.

A. I just said he told me, "We will sell."

Q. By Mr. Knapp: Now, how long was it after that, to the best of your recollection, that Mr. Douillard brought the deed over to you?

A. I cannot say, Mr. Knapp, it might have been a couple of weeks.

Q. A couple of weeks?

A. Right in there somewhere.

Q. Did you have any conversation with him in the meantime or he with you?

A. No. [263]

Q. As to the urgency of getting the property in your possession?

A. No.

Q. Now, did you talk with Dr. Hovey about this sale?

A. No, sir.

Q. You go to take treatments every once in awhile from Dr. Hovey?

A. I do.

Q. During that period of time did you take any treatments from him?

A. I have not had any treatments for several months. I don't think any since then.

Q. By Mr. Knapp: And when he brought this deed over to you, showing Dr. Hovey had given him a deed for that property, did he talk about the transaction between him and Dr. Hovey at all?

A. No.



(Testimony of Melanie Douillard Woodd)

Q. Did he tell you any of the details? A. No.

Q. You didn't ask him? A. No.

Q. Didn't it occur to you as rather peculiar that Dr. Hovey would make a deed to him without Mr. Knapp's consent? A. I never gave it any thought.

Q. You thought nothing about it?

A. No, I didn't. [264]

Q. Had you consulted with any attorney prior to the time you took these deeds? A. No.

Q. If I understand correctly, your testimony was to this effect: You state whether I am right or not, that he brought in a deed, executed by Dr. Hovey to him?

A. You mean Louis Douillard?

Q. Yes. A. Yes, sir.

Q. And that at the same time he brought in a deed executed by him to you?

A. Yes, it might have been a day in there.

Q. And I understood you took those two deeds to the bank? A. Yes.

Q. What bank was that?

A. The Security Bank.

Q. What department was it?

A. In Mr. Dick's department, the loan and trust.

Q. The loan department? A. Yes.

Q. What happened there, what did you ask him?

A. I asked him—on the first set of deeds I asked him if this deed was all right and he said the legal was wrong and he had it filled in. I had the new—

Q. By the Referee: He made the new forms out? [265] A. That is right.

Q. Then you had to give them back to Mr. Louis Douillard? A. That is right.

(Testimony of Melanie Douillard Woodd)

Q. And he had to take them back to Dr. Hovey to have Dr. Hovey sign them again? A. Yes, sir.

Q. It was a good thing you didn't record this first one; it was all ready to record, was it not?

A. Yes, sir.

Q. During all of this time you didn't come back and talk to Mr. Knapp about this? A. No.

Q. Did you know how much Louis gave for the property? A. Yes, sir, he said \$500.00.

Q. Didn't that amaze you? A. Amaze me?

Q. Yes.

A. No, sir, they got it for seventeen hundred; why should \$500.00 amaze me?

Q. Well, you made a better deal than they did.

A. I hope so; at least.

Q. Well, the property is worth many, many times \$500.00? A. It is in awful shape.

Q. But that was all Louis paid for it?

A. Yes, sir. [266]

Q. And it didn't surprise you when he told you he had bought the property for \$500.00? A. No, sir.

Q. Did you think that was too much, considering they got it for seventeen fifty?

A. Yes, I would think it was too much.

Q. You didn't really expect he would have to pay anything for it? A. I don't know, your Honor.

Q. But you think the \$500.00 was too much that was paid? A. Oh, no, I just said that, no.

The Referee: Oh, Mrs. Woodd, don't say anything you don't mean.

A. No, I think \$500.00 was enough.

(Testimony of Melanie Douillard Woodd)

Q. By the Referee: You think he should not have paid any more than that?

A. Oh, I don't know, your Honor.

The Referee: Any more questions? Any other re-direct?

Mr. Knapp: I have some more questions I want to ask, your Honor.

The Referee: Oh, pardon me. Go ahead.

Q. By Mr. Knapp: When you took the deeds down to the trust company and brought them back to Mr. Douillard, did he tell you where he got the \$500.00?

A. No. [267]

Q. Now, did you owe him \$500.00?

A. I owe him?

Q. Yes, did you owe him \$500.00?

A. I did not.

Q. And did you give him \$500.00?

A. I did not.

Q. By the Referee: Are you sure of that?

A. I am sure of it; he has a bank account of his own.

Q. In other words, the question is, in effect, was it your money? A. No, sir, it was not my money.

Q. It was not your money? A. No, sir.

The Referee: Any other questions?

Mr. Knapp: That's all.

Mr. Bowden: Just a moment, please.

Q. By Mr. Bowden: Mrs. Woodd, when you endorsed this note so that Dr. Hovey could get that \$1,000.00 to put up as a bond in that other case in the Yarborough matter, what interest did you have in the outcome of the Yarborough case?

A. Nothing at all. I had no interest in that at all.



(Testimony of Melanie Douillard Woodd)

Q. In other words, you had signed over the note to Dr. Hovey to be applied on the judgment of Hovey versus yourself? A. Yes, sir, that released me.

Q. That released you? [268]

A. Yes, sir.

Q. And that note and trust deed of the Yarborough what amount was due on it, approximately \$1,000.00?

A. No, I think it was \$686.00 at that time, something like that.

Q. And the judgment had gone against Dr. Hovey and they wanted to appeal it, is that right?

A. I don't know.

Q. That was what he wanted the bond for, wasn't it?

A. Yes, I think that is what Mr. Heath said.

Q. Now, you had no interest in the Yarborough note and you had no interest in the Glendale property?

A. No.

Q. Then why were you interested in Dr. Hovey's getting \$1,000.00 out of the Glendale property to carry on the Yarborough—

A. Let me straighten you out on that—Dr. Hovey never got that off of the Glendale property, he got it off of the Virginia property.

Mr. Bowden: Well, let me get that straight.

Q. By Mr. Bowden: Why were you so interested in Dr. Hovey getting the \$1,000.00 upon the Virginia Avenue property for the Yarborough note?

A. I was not interested, the bank called me in.

Q. What did they say to you?

A. They said there was some form in the bank, and they [269] wanted that.

(Testimony of Melanie Douillard Woodd)

Q. Now, Mrs. Woodd you have been in the real estate business?

A. No, I studied to be, but I failed two or three times.

Q. Now, Mrs. Woodd, you know enough to know you don't have to sign that if you had no interest in that property?

A. No.

Q. And you knew at the time you signed your schedule that you had signed that note?

A. I had forgotten about it.

Q. You had forgotten about it?

A. Yes, because I got no money from it.

Q. Were you supposed to get some money?

A. No, and I didn't have any money or hidden assets when I filed my schedules the first time.

Q. Now, I think you said you went to Dr. Hovey and signed that note.

A. I signed the check.

Q. You didn't sign the note down there?

A. No.

Q. Did he call you to come down?

A. No, I had collected the rents and I took them down and he told me.

Q. Now, all during the time you were collecting the rents on the Virginia property you were quite friendly with [270] Dr. Hovey?

A. I would not say so awfully friendly.

Q. You were friendly enough to collect the rents and take them down and wait for a check, weren't you?

A. Yes.

Q. You were not unfriendly with him?

A. No.

Q. That went on for a year, until the time you went up to Mr. Knapp and told him about the trees and as

(Testimony of Melanie Douillard Woodd)

you said he got mad at you and was going to sell the property?      A. Yes, sir.

Q. Did you take any rent to Dr. Hovey after that?

A. When?

Q. After the time you went in to Mr. Knapp's office and before your nephew came home with the deed?

A. I don't think so, because the rents are due on the 15th of the month and this was done on the 11th or 12th, so I had no occasion to go down there.

Q. You had no occasion to go down there?

A. No.

Q. Now, having had all of this contact with Dr. Hovey, and Mr. Knapp telling you they were going to sell the property, why didn't you go down and talk to Dr. Hovey about it?

A. Because my attorney told me not to approach Dr. Hovey, not Mr. Stewart but Mr. Crandall, when I was discharged. [271]

Q. In other words, after Mr. Knapp said this, you went to your attorney, Mr. Crandall, and discussed this with him?

A. No; he told me that the day I was discharged here, in September. He told me I was a free woman and could buy this and that and if anyone wanted to give me money or gifts I could accept that, and I was free to start in business or whatever I wanted to do.

Q. And he told you not to talk to Dr. Hovey?

A. I said I could not see why I could not go in and talk to Dr. Hovey about this land and he told me not to.

Mr. Bowden: That is all.

The Referee: What is your contention, Mrs. Woodd, about Dr. Hovey's position? It was indicated by him



(Testimony of Melanie Douillard Woodd)

that he was not selling this property and didn't intend to sell this property to Mr. Louis Douillard, that all he was doing in effect was selling his trust position?

A. I never heard that.

Q. In other words, he was in there earning a fee; they were paying him a fee for the use of his name and his services as assignee, and his position when he was here, as I recall it, was that he was merely selling his trustee position, not the clear title, but just taking \$500.00 and transferring it all over subject to the trust?

A. I heard him say that, your Honor.

Q. Well, what is your position in connection with that? You thought Mr. Louis Douillard was getting the whole [272] property, didn't you?

A. Yes.

Q. And that terminated the matter?

A. Yes.

Q. Do you know how much Dr. Hovey had made out of this deal since he first was named as the plaintiff to sue you on the fee?

A. No, your Honor.

The Referee: Well, I don't know that I know either; but apparently there has been certain moneys which were paid to him for his services?

The Witness: Yes, but not by me.

The Referee: Yes, but it is your money.

The Witness: That is between the lawyer and him.

Q. By the Referee: Do you think for his services there was anything else that should be paid him out of this property other than what he has received? Did you ever think about that?

A. No, your Honor.

(Testimony of Melanie Douillard Woodd)

Q. Now here is something I cannot quite understand; in a matter as important as buying this property, didn't it occur to you to talk to Mr. Knapp about your nephew buying the property? A. No.

Q. Didn't you believe Mr. Knapp owned it?

A. Well, had he talked to me about it, I might have, [273] but the boy took it upon himself and went straight down and did it by himself.

Q. If you had known anything about his purchasing the property, you would have told him to go to Mr. Knapp first? A. I think I would have.

Q. Did you tell Mr. Knapp anything about it when you found out he had gone down and bought it and deeded it to you, then you didn't think of Mr. Knapp at the time? A. No, I didn't.

Q. Why not? Did you think he had no interest remaining in it or did you think he was through and out of it? A. I didn't know.

Q. This is a pretty small, simple point; we are saying whether or not you talked to him and why you didn't. Did you think he had no further interest in it or did you think he still had an interest in it?

A. I cannot answer that, your Honor.

Q. Well, did you think he had been paid in full?

A. I don't know.

Q. Did you think there was something still owing him? A. I don't know.

(Testimony of Melanie Douillard Woodd)

Q. In other words, you never gave it any thought one way or the other?           A. They had everything.

Q. They had everything; you had lost everything but this property which you got back? [274]

A. Well, that was gone too at that time.

Q. Yes, and you had lost everything else?

A. Everything.

Q. When you say "They had taken everything else," whom did you mean?

A. Mr. Heath, Mr. Knapp and Dr. Hovey. They kept saying Hovey, it was Dr. Hovey.

Q. And in addition to what they had taken, do you think they were entitled to something else?

A. I don't think so.

The Referee: Are there any other questions? I would suggest at the continuance that Mrs. Woodd may, if she desires, take the stand, and now that she knows the questions, see if she can give any more complete answers to them. I would like to get a little more definite answers on some of these matters. This matter is continued to Thursday afternoon. January 23, 1947, at 2:00 p. m.

Mr. Bowden: Will the Court instruct the witnesses to return?

The Referee: Yes, all witnesses are ordered to return at that time.

(Court adjourned.) [275]



Melanie Douillard Woodd

January 23, 1947

2:00 p. m.

Order to Show Cause on Various Parties;

Order to Show Cause on Bankrupt;

Examination of Witnesses.

The Referee: Are you ready in this Melanie Douillard Woodd matter?

Mr. Bowden: Yes, your Honor. Mr. Douillard, will you take the stand.

LOUIS ALFRED DOUILLARD, SR.,

being first duly sworn, on oath testified as follows:

Mr. Bowden: These are the exhibits the Trustee offered?

Mr. Stewart: Mr. Dick had the originals.

The Referee: I will clip them together.

Q. By Mr. Bowden: Mr. Douillard, what relation are you to the bankrupt? A. Her nephew.

Q. You are living with her now? A. Yes, sir.

Q. Where? A. 5255 Virginia Avenue.

Q. How long have you been living there?

A. Approximately a year now.

Q. That is the property in which we are—in which this litigation is about? [276] A. Yes.

Q. You, I believe, acquired a deed for that property?

A. I did.

Q. From whom? A. Dr. Hovey.

Q. When was that?

A. May or June, I forget the date.

Q. September the 12th?

A. Somewhere in there.

Q. And you gave your aunt a deed? A. Yes.

(Testimony of Louis Alfred Douillard, Sr.)

Q. That was all done in one day?

A. No, sir, I gave her the grant deed the next day.

Q. That would be the 11th and 12th of September, 1946?

A. Yes, approximately.

Q. And I think you testified she didn't pay you anything for the deed?

A. That is right, she didn't.

Q. And you paid Dr. Hovey \$500.00?

A. That is right, I did.

Q. How did you happen to go to see Dr. Hovey on that date?

A. I have called on him a couple of times on the property. I went down and did work for him.

Q. Did he tell you he owned the property?

A. Yes, sir. [277]

Q. Did you know anything about Mr. Knapp's claim to the property?

A. No, sir.

Q. Did you ever find anything about that up to the time of this hearing?

A. What is that?

Q. Up to the time of this hearing did you know anything about Mr. Knapp's claim to the property?

A. No, sir, I did not.

Q. By the Referee: In connection with Mr. Knapp's claim, Mr. Douillard, you knew in a general way that he and Mr. Heath had represented your aunt?

A. No, I did not.

Q. You knew she had had some litigation with her relatives, didn't you?

A. Something about this bankruptcy is all.

Q. No, I mean this litigation with her relatives.

A. I was in the Army at that time.

(Testimony of Louis Alfred Douillard, Sr.)

Q. I know, but I am asking you if you knew anything about it.      A. Oh, yes, sir.

Q. And you knew your aunt was represented by attorneys, didn't you?      A. Yes.

Q. Did you ever hear the name Heath or Knapp?

A. I believe it was Mr. Heath. [278]

Q. And whatever information you secured was from your aunt?

A. Well, anything about the case was not spoken to me much about it.

Q. Did she tell you she still owed Mr. Heath or Mr. Knapp any money?

A. No, she never mentioned that at all.

The Referee: All right.

Q. By Mr. Bowden: Mr. Douillard, is E. A. Douillard a relative of yours?

A. Well, he is supposed to be my uncle.

Q. Your father's brother?

A. Yes, sir, my father's brother.

Q. He was the plaintiff in the litigation between your aunt and himself, wasn't he, one of the plaintiffs?

A. I believe he was.

Q. And your father was one of the other plaintiffs?

A. I believe he was, yes, sir.

Q. Did your aunt tell you, that is the bankrupt, that Mr. Knapp and Mr. Heath had already been paid?

A. She never mentioned it, no, sir.

Q. What conversation did you have with her before you went down to see Dr. Hovey?

A. I had no conversation with her.

Q. Didn't she tell you that Mr. Knapp told her they were going to sell the property? [279]



(Testimony of Louis Alfred Douillard, Sr.)

A. She mentioned something about going to sell but she didn't say who.

Q. That is why you went down to see Dr. Hovey, wasn't it?

A. No, it was not, necessarily. I went to see him because I wanted to fix it up as a home; it is run down. I didn't want to invest any money in it until I had it.

Q. Did you invest any money in it?

A. I have a little, yes, sir, for repairs.

Q. You don't claim any interest in it, do you?

A. No, except for repairs.

Q. It belongs to your aunt?

A. I deeded it to my aunt.

Q. Isn't it a fact that that property always has belonged to her; she has always lived in it?

A. I don't know whether it always belonged to her or not.

Q. But she has always lived in it?

A. Yes, sir, ever since I have known, yes.

Q. By the Referee: You say you did repair it some?

A. Yes, sir, I did.

Q. About how much did you put in it in repairing it?

A. Oh, I would say around probably a hundred dollars or so, this and that, buying materials.

Q. That was over a year, was it?

A. Oh, yes, sir, the roof had to be fixed, it was [280] leaking like a sieve.

Q. And that is what you put into the property?

A. Yes, sir.

(Testimony of Louis Alfred Douillard, Sr.)

Q. By Mr. Bowden: How much rent have you been paying since you have lived there?

A. I don't pay rent. Not exactly rent, I give my aunt \$20.00 a week.

Q. And you have been giving her that for the last year? A. Ever since I came out of the Army.

Q. That is for room and board, or do you buy the groceries besides?

A. Well, I pay the utilities.

Q. And she buys the food?

A. Well, she goes out marketing.

Q. Do you buy any food?

A. Well, I have bought a few things, yes, sir.

Q. What has she been doing with the \$20.00 a week you have given her for the last year?

A. I would not know.

Q. When did you come out of the service?

A. December the 8th, 1945.

Q. And you immediately went to live with your aunt?

A. Yes, sir.

Q. And you are living there now?

A. Yes.

Q. By the Referee: I would like to go back, so Mr. [281] Douillard can just relate what he did in connection with the acquiring of the property. You have had several questions as to sort of conclusions, I just want you to tell what you did on the day in question and how you happened to do it and what pieces of paper you took in, if any, and the form of the deed and what happened and what you said to Mrs. Woodd and so forth.

(Testimony of Louis Alfred Douillard, Sr.)

Now, you were informed by her that the property was to be sold, was that it?

A. Well, she mentioned something to that point.

Q. Did you tell her then that you were going to go in and see Dr. Hovey? A. No, I didn't.

Q. You mean she didn't know you were?

A. She did not know it when I went down.

Q. She didn't know you had a secret thought in the back of your mind that you were going to buy the property? A. No, not at that time.

Q. When did she know it?

A. I would say after I went down and bought it.

Q. Did you have any idea what the property was worth on the market? A. No, I didn't.

Q. You knew about how much was against it, didn't you? How much is against it; this property that you were buying.

A. I don't know just what is against it. [282]

The Referee: What is against it? If a man is going to buy property, that is the first thing he wants to know.

A. I imagine about \$2,800.00.

Q. So you were going to buy the property subject to the \$2,800.00? A. Yes, sir.

Q. It was necessary to know what was owing, wasn't it? A. Well, I guess so, yes, sir.

The Referee: Well, absolutely. You go out and buy a \$2,800.00 lot that has \$2,800.00 against it and is worth \$3,000.00, then all things being equal you would pay \$200.00 and assume the balance?

A. That's right.

Q. So you must have known what was against it?

A. Yes, I did know.



(Testimony of Louis Alfred Douillard, Sr.)

Q. And you had not told your aunt you were going to see about the sale?      A. No, not as yet.

Q. When you picked Dr. Hovey and his wife up that day, where did you go?

A. I took them to a Notary.

Q. Then what did you do?

A. I had the paper notarized.

Q. The deed?      A. Yes, sir.

Q. Was that already prepared? [283]

A. Yes, sir.

Q. It had been prepared and you took it with you?

A. Oh yes, sir.

Q. And you went to a Notary?      A. Yes, sir.

Q. Where was the Notary?

A. In Glendale on Brand Boulevard.

Q. And then you took the deeds out of your pocket; the deeds were all filled out before you picked up Dr. Hovey?      A. Yes, sir.

Q. Then you picked up Dr. Hovey and then got his wife and took them to a Notary?

A. Yes, sir, and they signed the deed there.

Q. You are sure they signed the deed there?

A. Yes, sir.

Q. And then you picked it up, it was just one deed, wasn't it?      A. Yes, sir.

Q. And then you brought the deed back?

A. Yes, sir.

Q. What did you do with the deed when you brought it back?

A. I gave it to my aunt to take down and have it recorded for me.

(Testimony of Louis Alfred Douillard, Sr.)

Q. Did you hand it to her alone or did you hand her another deed at that time? [284]

A. I believe I just handed her the one.

Q. Then what next happened about the property?

A. Then I went and had the one made out with my name, to her.

Q. The same Notary? A. No, sir.

Q. Another Notary? A. Yes, sir.

Q. The same day?

A. No, I believe it was the next day.

Q. Then you handed that to her also?

A. Yes, and I told her to put it away.

Q. You told her to put it away? A. Yes, sir.

Q. And you told her to record the other one?

A. I told her to take that other one down and have it recorded for me.

Q. And she took it down and had it recorded?

A. Yes, sir.

Q. Did she ever give you a bill for having it recorded?

A. No, I gave her some money at the time.

Q. How much did you give her?

A. I forget, about \$5.00, I think.

Q. Did she give you any money back?

A. No, I don't think so.

Q. Now you have related it as it actually happened, [285] have you?

A. Yes, as it actually happened.

Q. You had some deeds in your pocket all filled out?

A. Yes, sir.

Q. You picked up Dr. Hovey and his wife?

A. Yes, sir.

(Testimony of Louis Alfred Douillard, Sr.)

Q. Or rather you had one deed?

A. One deed.

Q. And so you picked up Dr. Hovey and his wife and went to the Notary and the deed was signed and delivered to you, you brought it back and gave it to your aunt and told her to have it recorded?

A. That is right. I was working.

Q. Then the next day you had another form filled out?

A. Yes, sir, that is, I had it made out, at the same time, I had a friend make it.

Q. You had a friend notarize it?

A. Not notarize it, just type it up.

Q. It was typed up at the same time as the first one?

A. Yes, sir.

Q. But you didn't sign it until the next day?

A. No.

Q. Then you went to a Notary and signed it?

A. Yes, sir.

Q. And then you took it to your aunt?

A. Yes, I wanted her to have it. [286]

Q. Then she took it in and recorded it?

A. She took just the one in and recorded it.

Q. And you told her to keep the other one?

A. Yes, in case anything happened.

Q. Now let's go back over this and see if you can recall anything else.

Now, you went in to Dr. Hovey's?

A. Yes, down on Washington Boulevard, when he was there.

Q. And then you went with him to pick up his wife?

A. Yes, sir.



(Testimony of Louis Alfred Douillard, Sr.)

Q. Now before you did that, what else did you say about the purchase?

A. Well, I told him that I wanted it just for a home; I was not interested in it as an investment.

Q. You have told us about that but so far you have not said anything about arriving at a consideration. That is one of the important things of the deal. I would like to know how you happened to barter and so forth as you do in a real estate deal and got that amount.

A. Well, I believe that is what Dr. Hovey said he wanted at that time.

Q. What did he say?

A. He wanted to know whether I would be able to pay \$500.00.

Q. What did you tell him?

A. I told him I thought I could pay that all right. [287]

Q. Did he tell you he was not the owner of the property and was merely holding it in trust?

A. No, sir, he told me he was the owner.

Q. And was just selling his trust interest?

A. No, sir, he did not.

Q. He told you he was the owner?

A. Yes, sir.

Q. How did he happen to tell you that; what led to that?

A. I asked him if he was able to sell the property and he said yes, he was the owner. I figured on him being the owner because everything went down to him.

Q. Did you mention anything to him about Mr. Heath or Mr. Knapp?

A. I didn't know Mr. Knapp was interested.

(Testimony of Louis Alfred Douillard, Sr.)

Q. Why did you ask him if it was all right to sell, that is rather unusual question?

A. Well, because my aunt had been going through bankruptcy and everything was happening; I didn't know what was going on.

Q. And he was the one who mentioned the \$500.00?

A. Yes, sir.

Q. And you didn't know what he would take until he said that? A. No, sir.

Q. Then what did you say when he said \$500.00? [288]

A. I said all right, I would take it.

Q. What had you thought you would pay for it?

A. I didn't have any set figure in my mind.

Q. So then you closed up the deal right away, as soon as he named the figure? A. Yes, sir.

Q. Then you went to the Notary and signed it?

A. Yes, sir.

Q. You saw Dr. Hovey and his wife sign the deed?

A. Oh, yes, I was right there and so was the Notary.

Q. Who was it that filled in the form? You said it was a friend.

A. Yes, Miss Murphy, she just typed it.

Q. And she typed it in before you went in to Dr. Hovey's? A. Yes, sir.

Q. And that is the form which was recorded, is it?

A. I believe it was recorded.

The Referee: Any other questions?

Q. By Mr. Bowden: Mr. Douillard, I think you testified that previously, did you not, before you went

(Testimony of Louis Alfred Douillard, Sr.)

down to see Dr. Hovey you bought a certified check for \$500.00?

A. No, sir; I gave my personal check.

Q. Well, you made it out before you went down there, did you? A. No. [289]

Q. You just took the blank check down and made it out?

A. I think I made it out at the Notary's when I signed the papers.

Q. When were the internal revenue stamps put on the deed?

A. I don't know, my aunt took care of that.

Q. Weren't there any stamps on there when it was signed at the Notary's office?

A. I believe there was, I am not sure.

Q. Well, don't you remember?

A. Well, no, I don't.

Q. You would know, wouldn't you, if you looked at it, whether the stamps were or were not there?

A. I don't remember whether they were or not.

Q. Isn't it a fact that when you went down to talk to Dr. Hovey he told you your aunt owed him \$500.00?

A. Oh, no, sir.

Q. He didn't say anything like that?

A. No, sir, he did not.

Q. How much money did you have in the bank at that time?

A. Oh, I think I had around \$1,800.00, somewhere in there, in my checking and savings.

Mr. Bowden: That is all.

Mr. Krapp: May I cross examine?

The Referee: Yes, go ahead.



(Testimony of Louis Alfred Douillard, Sr.)

Q. By Mr. Knapp: What day did this conversation take [290] place with Dr. Hovey?

A. What day?

Q. Yes.

A. I don't remember the day.

Q. What day of the month?

A. I don't remember those dates.

Q. The deed, I think, was dated the 11th of September.

A. Well, the conversation was not then.

Q. How long before that was the conversation?

A. Oh, I would probably say two or three months, I talked to him off and on as I done work for him.

Q. For two or three months you talked with him about buying that property, is that right?

A. Just mentioned it, he would think it over.

Q. And during the time you were having these conversations with him for two or three months, did you ever talk with Mrs. Woodd about your conversations?

A. No.

Q. You never said a word?

A. No, I had no occasion to.

Q. And when you went to get the deed from him, that is, to have him and his wife sign the deed, you had not paid anything at that time, had you?

A. No.

Q. When did you pay him anything?

A. When he signed the deed. [291]

Q. Well, how did you know he owned the property?

A. Because he said he did.

Q. Just because he said he did? A. Yes.

Q. He didn't show you any deed, did he, to the property? A. No.

(Testimony of Louis Alfred Douillard, Sr.)

Q. You never asked to see any deed?

A. No, I was not interested in seeing a deed or whatever he would have.

Q. Where did you get your description of the property?  
A. Off of a tax receipt.

Q. Where did you see the tax receipt?

A. Dr. Hovey showed it to me.

Q. And that is the only thing you saw, the tax receipt?

A. Yes, sir.

Q. No deed?                      A. No.

Q. It didn't go through escrow?                      A. No.

Q. Have you got your bank statement with you covering that date?  
A. You mean the check?

Q. From your bank, yes.

A. I have the canceled check.

Q. Have you the bank statement showing the condition of your bank account during that time; how much was withdrawn [292] and how much was put back in?

A. I haven't it with me now.

Q. Now, isn't it a fact that there was \$500.00 put back in there?  
A. No.

Q. You can secure the bank statement, can you not?

A. Oh, yes.

Q. Now these conversations that ran along over the purchase of the property, running, you say, for about two months before the property was finally bought, when was the first time there was any purchase price mentioned?

A. Oh, I think just a few days before I went down with the grant deed, after he had talked to me on it.

Q. Who brought up the idea of your buying the property first?  
A. I did myself.

Q. You did?                      A. Yes.

(Testimony of Louis Alfred Douillard, Sr.)

Q. From Dr. Hovey?

A. Yes, I wanted to acquire the property so I could fix it up.

Q. Were you at that time paying \$80.00 a month?

A. \$80.00 a month for what?

Q. I understand from your testimony which you gave a few moments ago that you were paying \$20.00 a week.

A. Oh, to my aunt? [293]

Q. Yes. In other words, \$960.00 a year.

A. Yes, sir.

Q. And the groceries besides?

A. I never said I bought all of the groceries, no, sir.

Q. You knew besides that there was a rental of \$30.00 a month, was there, or was there any other rental?

A. On the apartment we live in?

Q. Yes.

A. No, I don't believe there was.

Q. How many houses are there on that property?

A. One and a small one. The one has been divided into a duplex.

Q. Is the small one rented? A. Oh, yes.

Q. You knew that at the time? A. Oh, sure.

Q. Did you know how much the rental was?

A. I am not sure exactly what it is.

Q. You had an idea, didn't you?

A. Yes, around \$20.00 or \$25.00.

Q. In other words, about \$300.00 a year for the small one and let's say around \$960.00, about \$1,260.00 in all a year for rentals, and yet you paid \$500.00?

A. Yes, I paid \$500.00.



(Testimony of Louis Alfred Douillard, Sr.)

Q. At the time Dr. Hovey was talking to you, you were talking about a tree being down and he could not fix it? [294]

A. Yes, it was not down yet.

Q. But you could fix it?

A. No, I could not fix it but it has to be done.

Q. And he told you he could not carry on the work?

A. Yes.

Q. And he told you his trusteeship was worth more than \$500.00?

A. No, he didn't mention trusteeship to me.

Q. You heard him testify here, didn't you?

A. I cannot help it. I didn't know about any trusteeship; I wish I had.

Q. By Mr. Stewart: Mr. Douillard, you didn't know of any \$960.00 rental on the main building of that property, or the \$30.00 on the little house?

A. No. I assumed the rents more or less took care of the mortgage, maybe the taxes; if they didn't I would have had to.

Q. By Mr. Bowden: How much was the duplex renting for? A. The other side?

Q. Yes.

A. I think it rents about the same as the other little house.

Q. \$20.00 a month? A. \$20.00 or \$25.00.

Q. That is about \$50.00 a month rental, not including the place where you and your aunt live? [295]

(Testimony of Louis Alfred Douillard, Sr.)

A. No, I believe the little house is about \$20.00 a month.

Q. Do I understand from your present testimony that on September the 11th, when you went to Dr. Hovey's place with the deed that you had already agreed on the \$500.00? A. No.

Q. You had not agreed over this three months' period of time you had been talking to him? A. No.

Q. Had you ever had any other conversation about money? A. No.

Q. You never had mentioned the price you would pay and he never had mentioned the price that he would take?

A. No.

Q. How many conversations did you have during that two or three months you referred to?

A. Well, I don't know; I would be there doing some work for him; I had to pick up furniture different places for him.

Q. Why did you go down to do work for him?

A. Because he asked me to. He was not able to.

Q. What work did you do?

A. Like picking up furniture for him from some lady of his.

Q. Some lady of his?

A. No, just a chest of drawers.

Q. By the Referee: This was just a personal favor and [296] had nothing to do with this?

(Testimony of Louis Alfred Douillard, Sr.)

A. No.

Q. And you didn't charge him for it?

A. No, I did not.

Q. Until you made your final arrangement you had never discussed the price of this property with him?

A. No, I had not.

Q. You were quite an optimist that day when you went out and had the papers made out and took them in there before you discussed the price or before you knew he would sell to you?

A. Well, I wanted to get the property and fix it up; I was not going to fix it up for someone else.

Q. This is the first time I ever heard of the purchaser having so much confidence that he could close the deal that he would have the deed prepared before he went in to the seller.

A. I didn't know whether he would sell or not, I didn't know but what he might change his mind.

Q. Did you have the \$500.00 filled in on the deed before you went to see him?

A. I don't know whether I did or not.

Q. If you had, that would be strange, wouldn't it?

A. Well, I don't know—

Q. You don't need to worry, you didn't have the \$500.00 in the deed. [297]

A. I don't remember.

The Referee: That's all. Step down.

Mr. Bowden: I will call Mr. Garnier.



## A. P. GARNIER,

being first duly sworn, on oath testified as follows:

By Mr. Bowden:

Q. Mr. Garnier, do you know Melanie Douillard Woodd, the bankrupt? A. Yes, I do.

Q. How long have you known her?

A. Well, I should say about six or seven or eight years. The first time I met her she came into my office, she had a piece of property on Vermont near Washington, she had been trying to sell it and she couldn't sell it and that is how I got acquainted with her.

Q. Did you handle that deal for her? A. Yes,

Q. What other transactions have you had?

A. That was sold for around \$7,500.00.

Q. What other transactions have you had with her?

A. I sold that trust deed down at Homes Garden for seven or eight hundred dollars.

Q. Any other transaction?

A. I sold her the Glendale property.

Q. Any other transactions?

A. No, that is about all, I guess. [298]

Q. Have you seen her quite frequently off and on in the last seven or eight years?

A. Well, like I would any client.

Q. I think you testified before you saw her about every week?

A. I couldn't say, maybe once a week or once a month or once in two months. I could not tell you.

Q. Anyway, you have seen her frequently over these past years?

A. Just like anyone I would do business with, sure.

Q. You purchased the Glendale property?

A. Yes.

(Testimony of A. P. Garnier)

Q. When did you purchase it?

A. You have the date there, I don't remember.

Q. January 1, 1946?

A. Well, that is the time.

Q. How much did you pay for it?

A. \$3,300.00, no, \$3,350.00.

Q. You paid \$2,400.00 cash and assumed a mortgage of \$600.00?

A. Yes, subject to a \$750.00 mortgage.

Q. \$750.00 or \$600.00?

A. I think \$750.00, I don't recall exactly.

Q. Well, you paid approximately \$3,100.00?

A. Around thirty-three, I thought. I have all of the information if you would like to see it. [299]

Mr. Bowden: We have it.

The Witness: Then that is all.

Q. By Mr. Bowden: You made your deal with Dr. Hovey?

A. I did not. Well, let's see—what do you mean? I didn't quite catch that question.

Q. Are you a real estate broker? A. I am.

Mr. Bowden: O. K.

The Witness: Now let me analyze it so there won't be any mistake.

Mr. Bowden: Well, we don't want a mistake.

The Witness: Mr. Knapp's wife called me up and I came to his office and he told me it was O. K. to go through with the property.

Q. By Mr. Bowden: When was that?

A. Whatever date it is.

(Testimony of A. P. Garnier)

Q. Sometime in January?

A. Those dates right there (pointing to paper). I don't recall them, and I went to escrow and put up my money and Mr. Hovey I presume eventually went there and put up his escrow instructions, that is the way it was done.

Q. By Mr. Bowden: Did you talk to Mrs. Woodd about it?

A. No, she had nothing to do with it.

Mr. Bowden: We will decide that.

Q. You knew she originally owned that property? [300]           A. Yes.

Q. And you were seeing her quite frequently?

A. You have asked me that question a half a dozen times.

Q. Well, answer it if you don't mind.

A. I do, because you are repeating it.

Q. You were seeing Mrs. Woodd quite frequently?

A. No, I don't want that frequently in there, I told you how often I saw her.

Q. Well, you were seeing Mrs. Woodd off and on?

A. Now you are talking. I saw her just like I would any client.

The Referee: Oh, gentlemen, gentlemen, let's get to the questions.

Q. By Mr. Bowden: When you went to Mr. Knapp's office at the suggestion of Mrs. Knapp, who did you see down there?           A. That's right.

Q. Well, whom did you see down there?

A. I told you, I saw Mr. Knapp and Mrs. Knapp.



(Testimony of A. P. Garnier)

Q. Both of them together?

A. Yes, I went into his office. When I came there I went into his office and we talked it over and Mr. Knapp told me—we got together on the deal and then we went into escrow.

Q. Let's have the conversation. What was the first thing that was said? [301]

A. Oh, I don't remember that conversation, goodness sakes, it was a year and a half ago. He called me there and I went and we made the deal and that is all I can tell you.

Q. By the Referee: You said a moment ago that Mr. Knapp said it would be all right for you to go ahead with the deal, what did he mean by that? You usually don't go to a fellow and he usually does not say it is all right for you to buy my property. Did you just go in and ask to buy it or did they come to you and ask you to buy it? A. They came to me.

Q. Did you raise the question was it all right to make the sale of the property?

A. I wouldn't say that. He was the one, I believe, that said they wanted to sell it and for me to go ahead with the deal.

Q. Then you concluded the escrow?

A. Well, not there, I think the next day or the next.

Q. And you executed your instructions and Dr. Hovey must have come in and executed his?

A. Yes, yes, sir.

Q. You apparently agreed on the price, in general, on the first day? A. Yes, your Honor.

(Testimony of A. P. Garnier)

Q. Up to that time had you ever discussed with Mrs. Woodd the fact that you were going to buy this property?

A. No, sir. [302]

Q. You had never discussed it with her?

A. No, sir.

Q. Then she never knew, that is, from you?

A. No, sir.

Q. When did you first discuss with her or her nephew this property? A. Not a thing in the world.

Q. Did you ever before these hearings discuss with her or tell her you had bought the property?

A. I assume she knew it.

Q. I am asking did you tell her?

A. That I purchased the property?

Q. Yes, or have any discussion with her about it?

A. You mean after I purchased it?

Q. Yes, after you purchased it.

A. Well, I presume so, I don't know.

Q. You considered she was out of it and the title was in Dr. Hovey and she had no interest of any kind in it? A. Yes, yes, sir.

Q. In other words, in connection with this deal it was, as far as you were concerned, a bona fide transaction?

A. I should say, yes.

Q. You were buying it as cheap as you could, you put up your money and got your deed and then you resold it?

A. That is correct, your Honor.

Q. And Mrs. Woodd got no part of it? [303]

A. No, sir.

(Testimony of A. P. Garnier)

Q. And wasn't supposed to?

A. No, sir, it was my property, and my profit. That is the way I make my living, I buy these things and sell them.

The Referee: I think your position is quite clear. We have had nothing to the contrary.

Q. By Mr. Bowden: When did you sell this property to Mrs. Woodd?

A. You are going pretty far back, I cannot remember that date.

Q. Well, approximately?

A. I guess three or four years prior to this sale.

Q. Around 1942 or '41?

A. Something like that. I think I sold it for \$3,500.00.

Q. You sold it to her for \$3,500.00?

A. I think so, thirty-three or thirty-five.

Q. And you bought it for thirty-one?

A. I bought it for thirty-three, and then besides the thirty-three I had expenses—I had escrow charges and back taxes and one thing and another which brings it up to more than that.

The Referee: That is clear. If the trustee or the creditors contend from that—

Q. By Mr. Bowden: Then you sold it for \$8,750.00?

A. Correct. [304]

Q. When did you sell it?

A. You have the date there.

Q. Don't you remember?

A. Wasn't it in April.

Q. April, 1946? A. Something like that.

Q. About April the 12th? A. Yes.



(Testimony of A. P. Garnier)

Q. So you held the property from January, 1946 to April? A. Three or four months, yes, sir.

Q. And I presume it took about a month to go through escrow when you bought it and about a month to come out of escrow when you sold it?

A. That is about right.

A. It seems to me there were a couple of months in between. I would not have sold it then but this barber was going to be thrown out and he came to my office and asked if I wanted to sell it and I told him I was always looking for profit.

Q. Do you happen to have all of your canceled checks and bank statements for 1946?

A. No, but if it is satisfactory to my attorney—I have brought along my checks and balances and all of that, if that will help you. [305]

Q. Your bank checks? A. Yes.

Q. And statements?

A. Yes, I have my statements but of course I wouldn't want these to go on record; I would like to have it kept off but I am willing to show it to you, if that will do you any good.

The Referee: I imagine the inquiry would be whether or not your bank checks showed any payment to Mrs. Woodd.

The Witness: Oh, no, not a thing, I never gave her a nickel or anyone else.

Q. By the Referee: Either by check or by cash?

A. Oh, no, your Honor.

The Referee: Any other questions?

Mr. Bowden: That is all.

The Referee: Any cross examination?

(Testimony of A. P. Garnier)

Q. By Mr. Knapp: Was there any—did you make any examination of that place for termites?

A. I would say this: It was in very bad shape, termites, painting inside and out and that is why I figured I should purchase it for that price. It was in very bad condition.

The Referee: That is all. This witness is excused.

Mr. Bowden: I will call Dr. Hovey. [306]

MILES L. HOVEY,

being first duly sworn, on oath testified as follows:

By Mr. Bowden:

Q. Dr. Hovey, you are a chiropractor doctor?

A. Yes, sir.

Q. Are you acquainted with Mr. Knapp?

A. Yes, sir.

Q. And the bankrupt Mrs. Woodd?

A. Yes, sir.

Q. And you were acquainted with Mr. Fred W. Heath in his lifetime?      A. Yes, sir.

Q. Now we have been discussing this property on Virginia Avenue, which is the property described in the Trustee's petition; that property stood in your name as of record, last September the 11th?      A. Yes.

Q. And about September the 11th you had a transaction with Mr. Douillard, the bankrupt's nephew?

A. Yes.

Q. Tell us what conversation you had with him that day.

A. Well, he came in and said he would like to have the place.

(Testimony of Miles L. Hovey)

We had talked about the condition of this place many times before and he made an offer of \$500.00 for it.

Q. Did you tell him you owned the place? [307]

A. I told him that I had it in my name as trustee.

Q. What did he say to that?

A. Well, that was all right, that was just the same thing.

Q. What did he say, though?

A. I don't recall what he said exactly; his exact words.

Q. Did you tell him Mrs. Woodd owed you \$500.00?

A. No.

Q. There was no conversation about that?

A. No.

Q. You claim she did owe you \$500.00 at that time, don't you?

A. No, she didn't owe me anything.

Q. She didn't owe you anything at all?

A. No.

Q. By the Referee: Did you tell him that there was a \$2,800.00 encumbrance against the place?

A. I don't recall that I did discuss the loan on it because that naturally would go with the place.

Q. What was he—did he ask you if the place was clear?      A. No.

Q. And you didn't tell him—what did you suppose he was giving you the \$500.00 for?

A. All he gave me the \$500.00 for was the place. I wanted some work, I hated to see the place depreciate so. [308]



(Testimony of Miles L. Hovey)

Q. Yes, but why would he give you \$500.00 and maybe get nothing but a job out of it and maybe a thankless job?

A. Well, he wanted the place to live in.

Q. He was already living there?

A. And he didn't want to put any repairs in it without having something to show for it.

Q. I know, but he was not going to own the property, was he?

A. He would own whatever interest or title I had.

Q. And what was that?

A. That was the trustee ownership.

Q. And what was that trust?

A. I don't know what that is.

Q. Why would you sell your trust position? You could not do that, could you, without conferring with Mr. Heath or Mr. Knapp; why would a man buy your position?

A. I don't know.

Q. It might be terminated the next day, just like that, you had no life interest in this, they might terminate this on you the next day?

A. I should think they could, I don't know about that.

Q. But you never had any discussion with Mr. Douillard on that phase of the case?

A. No, I took it for granted he understood that. He didn't talk about that.

Q. Now, he came in on that day, the 11th, and that is [309] the first time you had discussed the price with him, is it, or had you told him you would take \$500.00?

A. No; I don't recall. We talked about the place several times.

(Testimony of Miles L. Hovey)

Q. Did you talk about how much it would take for him to buy your position or your trust interest?

A. No, I think that was the first time the price was mentioned at all.

Q. And you mentioned nothing about the encumbrance on the property?

A. I think they knew all about the encumbrance.

Q. But you didn't talk with him about it?

A. No.

Q. You went with him to get Mrs. Hovey and went to the Notary?           A. Yes, sir.

Q. Did he have these papers for you to sign?

A. The papers that were typewritten.

Q. The first time he came to get you and picked Mrs. Hovey up and went to the Notary, did he take those papers out of his pocket for you to sign?

A. He handed them to me and my wife and I handed it to the Notary and then he picked up the paper and went out.

Q. Went out with the deed?           A. Yes.

Q. He didn't come back another time to have a deed [310] signed?

A. He came back and said these papers were not correct and it would have to be done over.

The Referee: Your memory is better on that than his. He didn't recall anything about that. You heard him testify, didn't you?

The Witness: Yes, sir.

Q. By the Referee: When did he come back and have another deed signed?

A. I don't remember that date but it was perhaps—

(Testimony of Miles L. Hovey)

Q. Was it a week afterward?

A. A week, I should judge, approximately that.

Q. Then this second deed, did you and Mrs. Hovey go with him on that occasion?

A. Yes, sir.

Q. To the same Notary?

A. The same Notary.

Q. And that was the deed which is actually recorded?

A. That is correct.

Q. That was about a week after the first happening?

A. Five days or a week, yes, sir.

Q. The \$500.00 check which you received, that was received on the first day, wasn't it?

A. That's right.

Q. And you immediately cashed that, did you?

A. No.

Q. When did you cash it?

A. I don't recall. I put it in the bank later, some time later.

Q. Did you put it in the bank before the second deed was executed? A. No.

Q. Why did you keep it five days?

A. I don't know, I am inclined to keep checks too long.

Q. You were pretty pressed for money at that time, were you not? A. Well, to some extent.

Q. But you just kept the check? A. Yes, sir.

Q. More or less through lack of desire to clear it through?

A. I didn't want to put that check into the bank until I needed it real badly and that, together with the fact that I was moving, and I held it in reserve until I needed it.



(Testimony of Miles L. Hovey)

Q. Did you have any conversation with Mrs. Woodd about selling the property?

A. No, I don't think I discussed it with her.

Q. At any time?

A. Afterwards when they said they had transferred the deed I told her I thought that was a mistake to do that.

Q. Why would it be a mistake, in your opinion?

A. Because she had just gone through bankruptcy. [312]

Q. You mean when they said they had recorded the deed?

A. Yes, sir.

Q. And you said that was a mistake because she had just gone through bankruptcy?

A. It would not look very good. He felt he had a perfect right to give his aunt anything he wanted.

Q. How did you happen to find out that he had given the deed to her? Who told you that?

A. Well, she told me that the boy, her nephew's boy, had been in trouble and that he had come and given her the deed. She came over, I believe, for a treatment, and she was telling me that.

Q. She explained he had given it to her and she had had it recorded?

A. Yes.

Q. And you told her in your opinion that was not a good thing?

A. That is right.

Q. What did she say to that?

A. Well, she said she thought it was perfectly all right; he had a right to give her anything that he wanted to.

Q. As a general principle—and didn't you think it was all right if there was a personal attachment of the

(Testimony of Miles L. Hovey)

aunt to the nephew, that relationship, for him to give the property to her if anything happened to him?

A. Yes, sir. [313]

Q. Did you think that was all right?

A. I think it would be all right.

Q. Did you tell her that or did you have any discussion?

A. No.

Q. You were not attacking the proposition then, as a matter of right or wrong; that is, he had no right to give it to her if anything should happen to him; your theory was that even though he had paid you \$500.00 it was not a good idea for him to transfer that to her so close to bankruptcy?

A. Well, it would not look very well.

Q. You didn't mean it would not be all right if there weren't a bankruptcy to give this property to her if anything happened to him?

A. Yes, that would be all right. That was one of the reasons I felt like getting out and transferring it to someone else. I felt very precarious in my own health and wanted to be free.

Q. Then as you understood it, if anything happened to Mr. Douillard, who bought the property from you, if he should die or anything happen to him, the property would pass to her?

A. Yes.

Q. What would pass to her?

A. The title I gave.

Q. It wouldn't be much, would it? They would not be getting much if they could cancel it the next day, that would [314] not be taking care of her, would it?

A. I didn't know it was so easily canceled.

(Testimony of Miles L. Hovey)

Q. Well, it had been pretty profitable to you, you got along pretty well by taking the title, didn't you?

A. I had a great deal of mental distress, not being able to physically take care of it and not being able to go to see it but on a few occasions.

Q. Well, if we follow your theory, Mrs. Woodd is now the trustee, holding the property and collecting the rents and so forth; just holding it at the pleasure of the Heath estate and Mr. Knapp?

A. That is right.

Q. Suppose she would pay them off, would she then get it under your theory?

A. Yes, sir.

Q. How much would she have to pay them?

A. I don't know; that would have to be between them; she would have to pay whatever legal fees was owing.

Q. But you don't have the exact amount?

A. No, I don't think the arrangement between them is settled in amount as long as the litigation is incomplete.

Q. No, why didn't you talk to Mr. Knapp before the sale? We went into that rather thoroughly before and I have the impression—well, you didn't and you seemed to wish now you had and it was more or less an oversight; was that the situation? [315]

A. Yes, that is true, but I never felt very much like talking to Mr. Knapp; he is quite busy and I used to visit and talk with Mr. Heath frequently. I went to him with any legal question of my own or interest of his but I didn't have any personal arrangement with Mr. Knapp on it.

Q. I know, but when Mr. Heath died, then didn't that more or less throw you to Mr. Knapp in connection with this thing?

A. Oh, yes, yes.



(Testimony of Miles L. Hovey)

Q. What did you say to Mr. Knapp about this property when Mr. Heath died?

A. I don't think I said anything about it. I don't recall.

Q. Well, it would throw you to him to take up the matters?

A. Well, naturally he was taking care of the legal business of Mr. Heath.

The Referee: I appreciate that.

Q. Did you discuss with him what you should do or how you should continue to hold the property?

A. I believe he told me at one time that as soon as he had time he would discuss with me how they would settle the trust and the property and some different arrangement.

Q. That is, how much they would receive from Mrs. Woodd, is that it?

A. No, when he had time he would have me come down to [316] the office some day and make some different arrangement about it, but nothing further had been said for some months.

Q. Then you slipped in there and gave the deed for \$500.00 without telling him, after he had told you he was going to make some different arrangement?

A. Yes, sir, he told me some other arrangement was going to be made, but nothing was done for so long. I didn't talk to him. I know I should have gone up and talked to him.

Q. Did you remit this \$500.00 to him or to the Heath estate?

A. No, sir.

Q. Now, I think out of this other sale you got some \$1,200.00?

A. Yes, sir.

(Testimony of Miles L. Hovey)

Q. What did you do with that?

A. I put it in the bank.

Q. And kept it? A. Yes.

Q. Was that—has demand been made upon you for that? A. No.

Q. Was that in payment of something that Mr. Knapp owed you? A. No, Mr. Heath owed me that.

Q. Mr. Heath? A. Yes, sir.

Q. Did that settle your account with him? [317]

A. Well, approximately.

Q. Well, let's say actually.

A. Well, he borrowed \$1,000.00.

Q. Yes or no; does it settle your account—when you got that, did that settle your account?

A. Yes, sir.

Q. And you had nothing else coming?

A. Yes, I would be content with that, although there was no interest for 20 years.

The Referee: Any other questions?

Mr. Knapp: I have a question.

The Referee: Well, let's let the Trustee conclude.

Q. By Mr. Bowden: Was it understood between you and Mr. Knapp that when this Virginia Avenue property was disposed of or settled up that you were to get \$500.00 for your services in connection with it?

A. There was no specified fee. I was to get something.

Q. \$500.00 was talked about, wasn't it?

A. No, I don't believe it was ever mentioned.

(Testimony of Miles L. Hovey)

Q. Who said you were to get something, if not \$500.00?

A. Mrs. Knapp and I believe Mr. Heath, but after Mr. Heath's death, Mrs. Knapp said I should have something for it and that was all that was said.

Q. You had \$500.00 in your mind?

A. Yes.

Q. By the Referee: But you didn't express that to them? [318]

A. No, I didn't say anything; it was not settled yet.

Q. By Mr. Bowden: That is the way you arrived at your \$500.00 with Mr. Douillard?

A. That is right.

Q. You figured that you were getting paid for your trouble in connection with the property; is that correct?

A. That is right.

Q. How much have you received all told from the Woodd litigation, Mr. Hovey?

A. Well, about—including that \$500.00 I think the other was \$1,000.00—it is about \$1,500.00 or \$1,600.00.

Q. That is the total of both of the properties or all properties?

A. That was received out of that litigation but it was not payment for that. It was settlement of Mr. Heath's personal debt to me.

Q. I understand, but what I want to know is how much money have you received from the Woodd property, the Woodd litigation, in total, regardless of what it was paid to you for.

A. Approximately \$1,700.00, perhaps a little less.

Q. And you have kept all that money?

A. Yes.



(Testimony of Miles L. Hovey)

Q. And have made no accounting to anyone?

A. No, that is right.

Q. And Mr. Heath's obligation is all wiped out as far [319] as you are concerned? A. Yes.

Q. And Mr. Knapp's? A. Yes.

Mr. Bowden: All right.

Q. By the Referee: At the other hearing we had a photostatic copy of the will, as I recall, that was offered and marked. Did counsel get that confused in your file?

Mr. Bowden: No; I have looked for it. I talked with Mr. Stewart and he agrees with me that no one touched that will after it was offered and marked.

Mr. Clements: The Court asked two or three questions about it.

The Referee: Oh, yes, and I put it up here and usually after we have a hearing and the exhibits are introduced, the girl comes immediately and lists them and locks them up.

Mr. Bowden: Well, we have ordered another one and I read it into the record and Mrs. Leiden has her notes here.

The Referee: Well, that is not exactly necessary. I just wanted to ask a question at this time in connection with it.

Q. By the Referee: You were here at the other hearing? A. Yes, sir.

Q. And I read the paragraph in the will whereby Mr. Heath in his communication to his wife informed her that there is \$1,000.00 still owing on the Woodd judgment. Do you [320] recall that? A. Yes, sir.

Q. Did you have at any time prior to this death, a discussion with him, the substance of which would lead

(Testimony of Miles L. Hovey)

you to believe that was the correct amount that was owing?

A. No, no, the last time I discussed that with him he said that the legal fees was going to be divided into five-eighths and three-eighths, but there was no amount mentioned.

Q. Did he ever say prior to his death how much he was to receive?

A. In total amount? No, it was \$4,200.00, I think, or something of that kind to be divided.

Q. But he never said how much he had received or how much additional she should receive?

A. No, I don't think he had come to any particular conclusion because there was still so much work to be done yet.

The Referee: Any other questions?

Mr. Knapp: Yes, sir.

Q. By Mr. Knapp: Doctor, you never did get the deed for the Virginia Avenue property into your possession; it never was delivered to you, was it?

A. No.

Q. You never saw the deed, did you? A. No.

Q. You don't know what the contents of the deed are, [321] do you?

Mr. Bowden: I object to that as a leading question.

The Referee: Overruled.

Mr. Knapp: It is cross examination.

The Referee: Go ahead. A. No.

Q. And at the time that the property was allegedly sold to Mr. Douillard there was no deed in your posses-

(Testimony of Miles L. Hovey)

sion that you could show him, is that right, whereby he knew what he was buying? That is, I mean the deed from the Sheriff or anything of that kind?

A. No.

Q. And you were not there at the time of the Sheriff's sale, were you? A. No.

Q. So all—whether you owned that property or not, or how you owned it, was a matter of hearsay, is that true? A. I guess that is right.

Mr. Knapp: That is all.

Q. By Mr. Stewart: You got the rent from that property from the time of the Sheriff's sale?

A. That is right.

Q. And you paid the tax on it?

A. Yes, sir.

Q. Did anyone ever question your getting the rent or paying the taxes or handling the property? [322]

A. No.

Q. By Mr. Bowden: Well, Mrs. Woodd collected the rent for you all of the time, didn't she?

A. She brought it to me most of the time, sometimes I asked her to take it to the bank.

Q. As a regular thing though she would bring it to your office and then you would make a check to the mortgage company or the bank and she would take it and pay the mortgage? A. Yes, sir.

Q. And that was your regular routine, month in and month out, wasn't it? A. Yes, sir.

Q. By the way, what were the payments on that monthly obligation, the mortgage?

A. I think \$30.00 or \$35.00.



(Testimony of Miles L. Hovey)

Q. And that is the amount of money Mrs. Woodd would give you every month?

A. Well, she brought the rentals separately.

Q. Well, it amounted to \$35.00? A. Yes, sir.

Q. One offset the other; she would bring you \$35.00 and you would write a \$35.00 check and she would take it to the bank? A. Yes, sir.

Q. There was no leeway?

A. Well, there was a little. [323]

Q. But it came to \$35.00 every month?

A. Yes.

Q. No one questioned your right to handle and collect those rents? A. No.

Q. By Mr. Knapp: In fact, you were instructed to collect those rents, were you not?

A. Yes, that is right.

Q. By Mr. Knapp? A. Yes.

Mr. Knapp: That is all.

The Referee: I would suggest that it might be appropriate in this hearing to have any of the testimony here in this hearing of Mrs. Woodd, Mr. Douillard or Dr. Hovey on the subject matter that we have under consideration now, considered in evidence in this matter.

Mr. Bowden: We had that stipulated at the last hearing.

The Referee: I knew it covered the witness but I didn't know it was to cover Dr. Hovey also.

Mr. Bowden: I think it was agreed the Court could consider anything that has been offered.

The Referee: That will be the order then, otherwise it could come in a laborious way by the offer and so forth.

(Testimony of Miles L. Hovey)

Q. By the Referee: Now, have you anything to add to this, Dr. Hovey? Can you throw any light on this situation? Sometimes by question and answer we don't get the whole [324] picture because the question is bounding in a certain direction and sometimes if the counsel sticks right with it, it may not open up an inquiry. Can you add anything to your own position, your inconsistent position; you as the admitted trustee look for instructions from Mr. Knapp and Mr. Heath, in the handling of the matter in connection with this property, and then in effect selling the trust and pocketing the consideration; and then the person to whom you sold says, "No, he sold me outright, he told me he could give me good title, that he owned it." I wonder where the truth is in this case. You and Mr. Douillard are as far apart as the poles in your version of this.

The Witness: Well, he made me the offer. He came down and did some plumbing for me and some little jobs and he talked very rarely as a rule, because he was in a hurry and so was I, and there was not a great deal actually said about it; I took it for granted he understands it was a trustee ownership.

Q. He does not believe that and he testified just as clearly as you do. He said he thought he was buying the property. How much was owing on the mortgage at the date of the sale?

A. I imagine about \$2,800.00, I don't know exactly.

Q. \$2,800.00 was owing at that time?

A. I don't know exactly how much it was.

Q. Of course under his theory, that would be vitally [325] important, wouldn't it? A. Oh, yes.

(Testimony of Miles L. Hovey)

Q. And under your theory it would not make any difference, because it was not his obligation, it was the obligation of the beneficiaries.

A. That is right.

Q. Well, apparently we have as much as we will ever get in this.

Q. By Mr. Knapp: By the way, did he ever ask you how much was owing on that property? A. No.

Q. Do you recall his testimony a little while ago to the effect, "You said you were sorry for Mrs. Woodd"?

A. Oh, yes, I probably said that several times.

Q. At that time or inconnection with that, did he say he wanted to get the property for Mrs. Woodd?

A. He said many times he would like to have her have a home; but at that particular time I don't recall.

Q. Were you under the impression at the time that he was buying it that he was buying it for Mrs. Woodd?

A. No.

Q. Did he say anything about buying it for himself to live there?

A. No, he said he wanted to improve the place and I told him how badly it needed paint and lawn repair and plumbing repair, but he didn't want to put anything into the [326] place when he didn't have any interest in it.

The Referee: That is so inconsistent I hate to sit here and listen to it. He was buying a trust property, how could he have any interest in it?

The Witness: I didn't want to either.

The Referee: You didn't have to, you could have thrown this up any minute. Why would Mr. Douillard be concerned with getting your trust before he put any money into that trust property?



(Testimony of Miles L. Hovey)

The Witness: He wanted some security that would be at least as good as a lease, when he kept it up. I keep up my place under a lease.

The Referee: That is a naive argument.

Q. By Mr. Bowden: Dr. Hovey, why did you tell Mr. Douillard you felt sorry for Mrs. Woodd?

A. I felt sorry for her because she is very nervous and upset and in such long term litigation.

Q. How long did you say you have known her?

A. Oh, about eight or nine years, ten, maybe.

Q. You have given her treatments off and on during all of that time? A. Rarely, occasionally, yes.

The Referee: Mr. Knapp, what is your contention in connection with this \$500.00? Do you contend that is appropriate compensation to Dr. Hovey for his services in connection with this trust? [327]

Mr. Knapp: My theory of the case, I had nothing to do with it. It is a matter between him and Mr. Douillard.

The Referee: Is he entitled to any trust fee?

Mr. Knapp: Yes, I think he would be entitled to a fee for the trusteeship when he makes an accounting and at that time there would be a determination of what would be a reasonable trustee fee; I think the banks have a rate fixed on that and we would follow that; that was what I had in mind.

The Referee: What is your personal contention of what was actually said to Mr. Douillard and what this witness actually said in the sale? You have been with this case much longer than I have.

Mr. Knapp: I think shortly before this transaction took place there was a conversation between Mrs. Woodd

and Mr. Douillard to the effect that the property was to be sold; knowing Mrs. Woodd as I do, I think she was highly excitable, I think that her nephew, who loved her, was very much alarmed over the situation and he immediately began to ask Dr. Hovey what could be done about buying that property, and that he persuaded Dr. Hovey to give him a deed and gave him \$500.00, which I do not believe was his own.

The Referee: That it came from Mrs. Woodd?

Mr. Knapp: Yes, that it came from Mrs. Woodd but how and in what way I do not know.

The Referee: Well, the values are disproportionate, he was getting it at a remarkable value. [328]

Mr. Knapp: I would like to make one like it.

The Referee: What was the balance?

Mr. Bowden: \$2,300.00.

The Referee: Well, the buyer has said \$2,800.00. What is the trustee contention? I am not going to decide this now. I am going over my notes and have the reporter estimate what a transcript would cost and I may order it, so all of you will have the same thing before you. I have kept rather extensive notes but I would rather have a transcript.

Mr. Bowden: I don't believe Mr. Knapp has put on his defense yet.

The Referee: I want to see up to this point, so he will know what to answer, what is your contention as far as we have gone?

Mr. Bowden: My contention is there was a conspiracy. They entered into a conspiracy to get that stipulated judgment, they had execution issue and took it in Dr. Hovey's name and carried it along and finally filed a petition in bankruptcy with the understanding that

as soon as the bankruptcy was over it would go back to Mrs. Woodd. That is exactly what I argued on the discharge that they would do and the court granted the discharge and said I was wrong, but that is exactly what has come to pass. I think it is an out and out conspiracy and I don't mind saying so; I am sorry to have to involve Mr. Knapp, an attorney, in it, but that is my opinion. [329]

The Referee: Is there any other evidence?

Mr. Knapp: I would like to make a statement as to Mr. Heath's will.

The Referee: All right. Go ahead.

Mr. Knapp: Shall I take the stand?

The Referee: You have been sworn and you may sit right there. The will is in evidence.

Mr. Knapp: Mr. Heath at the time that this will was drawn evidently was of a mental status that he didn't know what his condition was, his financial condition. For example, "Mrs. Wilger is about paid up."

Mr. Bowden: If this is testimony, I am going to object to it. Mr. Knapp is not qualified to give an opinion.

The Referee: Yes. If you want to say that the man who made this will was incompetent, we are going to hold here that that will was made by a competent person.

Mr. Knapp: May I suggest at this time there was a statement here, taken from all of the rest of it—"Mrs. Wilger is about paid up."—

The Referee: That is reading from the will?

Mr. Knapp: Yes, sir, your Honor, at which time he also said, Mrs. Wilger is about paid up and that the Santa Rosa Mining Company owed him about \$5,000.00—



The Referee: Now, you are going to say that the man was not mentally sound.

Mr. Knapp: I don't know what it was, whether it was to [330] put his best foot forward in his wife's mind—

The Referee: I don't think we should take this dead man's will here and say he made misstatements as to his assets.

Mr. Knapp: Well, it was only to show that what was said in the will could not be taken at 100 per cent.

The Referee: But the will has been admitted to probate.

Mr. Knapp: Is has, we had to put it in.

The Referee: You don't have to put in the will of an incompetent.

Mr. Knapp: I don't know that he was incompetent, he was just in an extravagant mood.

The Referee: You want to show that Mr. Heath was incompetent on the day that was written and therefore we should not consider it as a declaration—unless you want to do that I think we should sustain the objection. Is there anything else?

Mr. Bowden: Nothing else from the Trustee unless Mr. Knapp has some testimony or defense.

Mr. Knapp: As regards this conspiracy—there is not one iota of conspiracy on the part of Mr. Knapp in connection with it. On the contrary, the entire evidence is contrary to anything of that sort. This thing has been reduced to transcript after transcript and adjudicated on this point, both in the Superior Court and the Appellate Court and finally in the Supreme Court of the State of California; [331] and out of anything that ever happened to any individual, the party who is opposed to him can

always bring in the idea of conspiracy or something of that kind, but there is no conspiracy in this case. As to his prophecy as to what would take place, I know nothing about it and have heard nothing about it. But I can see where Mrs. Woodd would try her very best to get hold of his property if she were advised badly, but it certainly is true that Mrs. Woodd took this property over without any knowledge on the part of Mr. Knapp and certainly not of Mr. Heath who is dead, and that the day after the discovery, Mr. Knapp went to Mrs. Woodd's place with Dr. Hovey to find out what had happened and how it had happened.

Possibly this is too much of a personal effort to prove as far as I am concerned and I hope the Court will excuse me, but I am a lawyer, and, your Honor, it hurts.

The Referee: I wish the reporter would give me an estimate on the cost of a transcript in this matter. Everything that has been said, and have it all written up. It may just be a coincidence that the argument that the trustee made at the time I granted the discharge and rather approved this transaction in the first instance has now come to pass; he said as soon as she gets her discharge she will get this property back, and I guess it was 60 days or so after her discharge that she did.

Mr. Bowden: She got it before the estate was closed. [332]

The Referee: That might have been just a coincidence. I don't want to do an injustice here. If I knew the amount that was still owing, if it is upon that basis, that is one thing. Dr. Hovey, your trustee, seemed to indicate that the trust was one which could be discharged upon the repayment of the amount that was due; on the other hand, your theory is there was absolute ownership

and he was merely the trustee for you in the operation of the property.

He said that he thought it was all right for Mr. Douillard to buy the property and give it to her so she would have it if anything happened to him. That is an inconsistency because under your theory you and the estate of Mr. Heath are the full owners of this property.

Mr. Knapp: That is true, your Honor.

The Referee: And Mrs. Woodd is a foreigner to it and has nothing to do with it. There are so many inconsistencies in the testimony of Mrs. Woodd, of Mr. Douillard, and of the last witness, Dr. Hovey, that I want to have a transcript just to run them down. There are so many inconsistencies—some maybe not so important but if accumulated they might have some importance. I am not impressed with either of the three I have in mind; their stories have been hard to get and reflecting conflicts in many instances. You have heard them the same as I have. You have heard Dr. Hovey; you have heard Mrs. Woodd and you have heard Mr. Douillard and all of those of you who are at the counsel [333] table can pick up and note the inconsistencies.

Mr. Stewart: I wonder if I could be heard on this to some extent.

The Referee: Yes, sir.

Mr. Stewart: From the connection I have had here, it seems to me the trustee's position has to be there is a conspiracy, that is the only ground upon which there is any issue whatsoever to set aside this discharge, and upon that theory and that theory alone. Their testimony is not satisfactory, it has never been satisfactory to me, any of the testimony; they don't make it clear, but because



there is testimony that arouses suspicious, I don't think that can be considered to be a conspiracy.

The Referee: It should certainly go beyond that, I grant you, it should go to a point where there is no question about it or there should be no order supporting it.

Mr. Stewart: The very fact that the property once belonged to the bankrupt and gets back into the hands of the bankrupt is not proof of a conspiracy. As I view the matter, it is somewhat like this: This woman had been through a lot of litigation and her attorneys wanted their fees, they felt \$7,000.00, but by some understanding with her they got it down to \$4,000.00 and they said all right, let it go at that. They had sold her out of all of the property she had and at that time they had concluded, according to Mr. Knapp, that they were whipped in this litigation and she was going to be [334] cleaned out of her property and they did what prudent attorneys would be expected to do, they protected themselves against everyone else and they sold the property out at the sheriff's sales for amounts less than the judgment, and they seem to have sold it out at a time when these other parties who were trying to recover were in a position to bid in the property and to redeem after it was sold. The properties were sold for less than the amount of the judgment. These people didn't step in and redeem the property; why? Because probably the market was poor at that time and the properties were not worth anything.

The Referee: I agree with you up to this point. Factually I think you are correct. Now, would there have been anything wrong in making an agreement that she could acquire the property for the payment of a fixed amount to them, and was there any such agreement as evidenced by the will? Is that what Dr. Hovey meant

when he said if they were paid what was owing to them, then it would be Mrs. Woodd's property?

Now, I agree with you up to that point. I have heard of attorneys who have sued their clients who they were representing and have bought the property in and then made an agreement to give the property back to them on certain terms. Now let's start from there and have your impression from here on.

Mr. Stewart: I think one of two things might have [335] happened. The attorneys might have made an agreement with Mrs. Woodd—we will buy it in at sheriff's sale and if there is anything left out of it, you can have it; on the other hand, they might have said to themselves and to her, "You are going to get cleaned out and we will take care of ourselves," and went on that theory; and feeling she had had a pretty hard time they had let her live in the property where she had been living and gave her a roof over her head, not because they had any agreement but they had a feeling in the matter, they didn't like to see her out on the street, and I think it is entirely possible the attorneys might have bought that property in without agreement, and if they did I don't think it has any connection with this bankruptcy. If they did buy it in with an agreement, then it does have a connection with this bankruptcy, without a doubt; but I think all of we attorneys have been in positions where some client loses all of the property and if we are in a position where we could get clear on the matter we, without making any agreement, would feel, "After all I don't want to make money out of this woman's hardship—we will give it back to her—" and I think they have a perfect right to give it back to her.



The Referee: What do you think of that statement in the will by Mr. Heath, which was written at a time when he had full and complete title in the name of his trustee and he owned in the name of his trustee \$10,000.00 worth of [336] property, or seven or eight thousand dollars worth, when he said in the will—now remember he had already foreclosed on the judgment and acquired the property as I have outlined, but in this very personal document addressed to his wife he said, “There is still \$1,000.00 owing to me on that judgment”; what do you think of that situation?

Mr. Stewart: I have tried to analyze that and from all of the testimony there has been I have not seen a scintilla of evidence where Mr. Heath had gotten anything out of this property, and if he had not, then he had five-eighths of the \$4,000.00 coming, then how could he say he had only \$1,000.00 coming? I cannot see anything on that from what we have before us.

The Referee: I cannot tie it in myself.

Mr. Stewart: Now, coming down to this transaction whereby this property came back. Coming to these people living in the house. We all know what conditions are now about having or not having a place to live—this had been their home for many years and she was living in the house. Someone said something about the property being run down and selling it and Mr. Knapp became annoyed about it and about being bothered with it and Mrs. Woodd heard of it and she was panicky and that was the nephew's home too, and they wondered what they would do; they were in a position where they did have a place to live and if the property was sold they would have no place to live and they began to try to find some way [337] whereby they could still stay there, and to



my mind it seems possible they were not too particular with just how they stayed there; they were just going to stay.

The Referee: Yes, but why doesn't Mr. Douillard take that position now? He does not take the position he has just a trustee position; no, he says he is buying the full matter to the exclusion of Mr. Knapp.

Mr. Stewart: I don't think he felt he had any trust position. I think he realized this thing was a mess and had been for a long time and he was getting some kind of a title, at least if the thing was sold to him he would not be put out.

The Referee: Didn't you hear him say he was buying it outright with no strings on it and he was getting full title?

Mr. Stewart: Yes, sir, I think that was his position here but if there is any fraud here, it seems to me it was a fraud on the attorneys that Dr. Hovey was acting for. The fraud of Dr. Hovey. I don't care whether they can tie the bankrupt into that fraud or not. That is not a fraud to set aside the discharge. If they expect to bring a suit to set aside the transaction, it is entirely possible they may show Mr. Douillard and Mrs. Woodd took title with sufficient knowledge to set aside that deed, but that is a matter for the proper court when they get to it, but I don't think that is a matter that should set aside the discharge here. [338] Everything points to the fact that there was a fraud on the attorneys rather than any fraud on the bankrupt.

The Referee: Do you represent Mrs. Woodd?

Mr. Stewart: Yes, your Honor.

The Referee: Are you indicating that she is a party to the fraud upon Mr. Knapp?

Mr. Stewart: I say I don't know about that. It looks to me as if the fraud was on the part of Dr. Hovey against his principals.

The Referee: Do you represent Mr. Douillard also?

Mr. Stewart: No, I do not appear for Mr. Douillard.

The Referee: Well, I am going to mark the matter submitted and when I get an estimate of the cost of a transcript and if it is ordered it will be in the file and any of you may take a look at it. It will take some time to get it out, so this matter won't be determined.

Mr. Knapp: There is one thing I want to call the Court's attention to: Mr. Heath had no right at any time to bind Mr. Knapp by any assertion as to how much Mrs. Woodd might owe him.

The Referee: I appreciate that.

Mr. Knapp: Then if he had intended to so state as to his part of the judgment—and there is another thing I want to call the Court's attention to: At the time that this original case of Hovey versus Woodd was taken up we didn't think we had lost the case. We thought we had [339] lost the judgment in the Superior Court but we had every belief that we could win it on appeal and we fought like tigers. We lost but we believed we were right.

The Referee: Well, I will mark the matter submitted.

[Endorsed]: Filed Feb. 14, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jun. 18, 1947. Edmund L. Smith, Clerk. [340]

[Endorsed]: No. 11904. United States Circuit Court of Appeals for the Ninth Circuit. Edna D. Heath, Executrix of the Last Will of Fred W. Heath, Deceased, and Myra C. Knapp, Executrix of the Last Will of Daniel A. Knapp, Deceased, Appellants, vs. John N. Helmick, Trustee of the Estate of Melanie Douillard Woodd, Bankrupt, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed April 20, 1948.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for  
the Ninth Circuit



In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11904

In the Matter of

MELANIE DOUILLARD WOODD,

Bankrupt.

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EDNA D. HEATH, as Executrix of the Last Will of  
FRED W. HEATH, Deceased, and MYRA C.  
KNAPP, as Executrix of the Last Will of DANIEL  
A. KNAPP, Deceased,

Appellants,

vs.

JOHN N. HELMICK, Trustee of the Estate of  
MELANIE DOUILLARD WOODD, Bankrupt,

Appellee.

PETITION FOR EXTENSION OF TIME TO  
DOCKET APPEAL

To the Honorable Judges of the Above Entitled Court:

The verified petition of Myra C. Knapp respectfully  
shows unto the Court as follows:

I.

That on May 3, 1947, an order was entered by a Referee of the District Court of the United States for the Southern District of California, Central Division, whereby Daniel A. Knapp, the husband of your petitioner, was deprived of his interest in a parcel of real estate in Los Angeles County, referred to in the record as the Virginia property.

II.

The petition for review of said order was denied by the United States District Court on December 1, 1947. Notice of appeal from said order was filed by said Daniel A. Knapp and the estate of Fred W. Heath on December 26, 1947, and two orders of extension of time were thereafter entered by said United States District Court, and the period within which to docket said appeal expires on March 24, 1948.

III.

Since the filing of said notice of appeal by said Daniel A. Knapp and on January 24, 1948, Daniel A. Knapp departed this life and on the 27th day of February, 1948, your petitioner was appointed executrix of his estate.

IV.

That petitioner is desirous of prosecuting said appeal and has retained Ernest R. Utley and J. Geo. Ohanneson as her attorneys.

V.

That by reason of the death of Daniel A. Knapp since the filing of said notice of appeal, your petitioner requires an additional thirty days time in which to docket said appeal and is advised by the Clerk of the United States District Court that an additional thirty days will be required in order to properly docket said appeal.

VI.

That appellants' designation of contents of records on appeal, together with a statement of the points on which appellants intend to rely are being filed in the District Court on this day.

That attached hereto is a stipulation of the attorneys for the Trustee in Bankruptcy, appellee herein, in which an extension of time to and including April 24, 1948, is consented to.

Wherefore, petitioner prays that an order be entered granting an extension to and including April 24, 1948, in which to docket said appellants' appeal.

MYRA C. KNAPP

Petitioner

ERNEST R. UTLEY

Of Counsel for Petitioner

[Verified.]

[Title of Circuit Court of Appeals and Cause]

STIPULATION EXTENDING TIME FOR  
DOCKETING APPEAL

It Is Hereby Stipulated by and between the appellants, Edna D. Heath, as Executrix of the Last Will of Fred W. Heath, Deceased, and Myra C. Knapp, as Executrix of the Last Will of Daniel A. Knapp, Deceased, through their attorneys, Ernest R. Utley and J. Geo. Ohanneson, and the Trustee in Bankruptcy, John N. Helmick, the appellee herein, through his attorneys, Leslie S. Bowden and J. N. Clements, that an order may be entered herein granting appellants up to and including April 24, 1948, to docket the appeal of appellants herein.



Dated this 19th day of March, 1948.

LESLIE S. BOWDEN and  
J. N. CLEMENTS

By Leslie S. Bowden

Attorneys for Appellee

ERNEST R. UTLEY and  
J. GEO. OHANNESON

By Ernest R. Utley

Attorneys for Appellants

[Title of Circuit Court of Appeals and Cause]

ORDER FOR EXTENSION OF TIME TO DOCKET  
APPEAL

Upon the reading and filing of the petition of Myra C. Knapp, Executrix of the Last Will of Daniel A. Knapp, deceased, for an extension of time within which to docket the appeal herein, and good cause appearing therefor,

It Is Therefore Ordered that the appellants herein may have up to and including the 24th day of April, 1948, within which to docket the appeal herein.

Dated this 23rd day of March, 1948.

CLIFTON MATHEWS

Judge of the United States Circuit Court of Appeals  
For the Ninth Circuit

[Endorsed]: Filed Mar. 23, 1948. Paul P. O'Brien,  
Clerk.

[Title of Circuit Court of Appeals and Cause]

APPELLANTS' STATEMENT OF POINTS ON  
WHICH THEY INTEND TO RELY ON APPEAL

To the Honorable Judges of the Above Entitled Court:

Pursuant to the rules of this Court, Edna D. Heath, as Executrix of the Last Will of Fred W. Heath, Deceased, and Myra C. Knapp, as Executrix of the Last Will of Daniel A. Knapp, Deceased, do hereby file with this Court the following concise statement of the points on which they intend to rely on this appeal:

I.

The controversy in the bankruptcy matter pertains to the ownership of one piece of real estate in Los Angeles, California, referred to in the record herein as the Virginia property. On the 18th day of April, 1944, M. L. Hovey became the absolute unconditional owner of said property as trustee for Fred D. Heath and Daniel A. Knapp and his title is evidenced by a sheriff's deed recorded in Book 21513, page 36 of the Official Records of Los Angeles County and neither the trustee in bankruptcy nor the bankrupt had any interest in said property since April 18, 1944. The order of the District Court, dated December 1, 1947, whereby the appellants were divested of said property is therefore erroneous and is not justified by the record and there is no substantial evidence to support the findings of the referee upon which the order of the District Judge was based.

II.

The appellants were not made parties in the above bankruptcy matter until December 31, 1946, when an

order to show cause was issued requiring the appellants and others to show cause in relation to their interest in said property. Therefore, all of the testimony adduced in the above bankruptcy matter prior to said December 31, 1946, is not binding upon the appellants herein.

### III.

There is no substantial evidence to support any of the findings contained in paragraph V in the Referee's findings of fact and conclusions of law.

a. There is no evidence in the record to justify the finding that there was a secret agreement between Fred W. Heath, Daniel A. Knapp and M. L. Hovey on one side and the bankrupt on the other that the Virginia property should be held by Hovey until the attorney's fees were paid.

b. There is no evidence in the record to justify the finding that the Virginia property was to be returned to the bankrupt upon her discharge in bankruptcy and that in the meantime she should have the use and control of said property.

c. There is no evidence in the record to justify the finding that the agreed attorney's fees were at any time paid in full and that the judgment entered in the Superior Court action number 450821 was fully satisfied.

### IV.

There is no evidence in the record to justify the findings of the Referee contained in paragraph VI of his findings of fact and conclusions of law.

a. There is no evidence to justify the finding that the Virginia property was an asset of the bankrupt at the



date of the bankruptcy proceeding or at any time since April 18, 1944.

b. That there is no evidence in the record to justify the finding that the ownership of said Virginia property was ever concealed from the trustee in bankruptcy.

c. There is no evidence in the record to justify the finding that fraud was practiced by the bankrupt.

## V.

While it is true that said Virginia property was transferred to the bankrupt subsequent to her discharge, the evidence is undisputed that the conveyance to her was without the appellants' knowledge or consent. Therefore, said conveyance to her was a nullity and since April 18, 1944, appellants have been and still are the owners of said property.

## VI.

There is no evidence in the record to justify the Referee's conclusions of law.

## VII.

The District Court was in error in adopting the Referee's findings of fact and conclusions of law.

## VIII.

The District Court was without jurisdiction to deprive the appellants of their ownership and title to said Virginia property in a summary proceeding.

## IX.

The controlling issues in the above bankruptcy proceeding as bearing upon the validity of the judgment in said Superior Court action number 450821, referred to in paragraph III, subdivision c hereof, and upon the validity

of the execution sale pursuant to said judgment were fully adjudicated and determined in favor of appellants herein in the case of Douillard v. Smith, reported in 70 Cal. App. (2) page 722 and the determination and judgment made and entered in that case constitutes res adjudicata on the controlling issues presented by this record. Therefore, the order of the District Judge of December 1, 1947, is erroneous.

Dated: June 3, 1948.

Respectfully submitted,

ERNEST R. UTLEY and  
J. GEO. OHANNESON

By Ernest R. Utley

Attorneys for Appellants

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 7, 1948. Paul P. O'Brien,  
Clerk.









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No. 11904.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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EDNA D. HEATH, Executrix of the Last Will of FRED  
W. HEATH, Deceased, and MYRA C. KNAPP, Executrix  
of the Last Will of DANIEL A. KNAPP, Deceased,

*Appellants,*

*vs.*

JOHN N. HELMICK, Trustee of the Estate of MELAINE  
DOUILLARD WOODD, Bankrupt,

*Appellee.*

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## APPELLANTS' OPENING BRIEF.

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This is an appeal by the estates of the late Fred W. Heath and the late Daniel A. Knapp from an order and judgment of the District Court entered on December 2, 1947, affirming the order of the Referee in the pending bankruptcy proceeding of Melanie Douillard Woodd, which decreed that a certain piece of real estate in Los Angeles, California, which is identified in the record as the Virginia Avenue property was an asset of the bankruptcy estate on the date of the filing of the bankruptcy petition, and that appellants, or their testates, had no interest therein. [R. pp. 57-62, 83.]

I.

**Jurisdiction.**

Melanie Douillard Woodd (herein referred to as Woodd) was adjudicated a bankrupt on August 29, 1945. The controversy herein is solely between the trustee in bankruptcy and the appellants, and the subject matter of the controversy is the ownership of the Virginia Avenue property, and also appellants' legal right to the proceeds of another piece of property which is identified in the record as the Glendale property.

The appellate jurisdiction of this court is under Section 24 of the Bankruptcy Act. The amount involved herein is in excess of \$500.00.

II.

**Real Parties in Interest.**

The bankrupt is not a party to this appeal.

The sole creditors of said bankrupt are Emile A. Douillard, Frank T. Douillard, Raymond F. Puissegur, and Juliette Evans [R. pp. 6-21, incl.], and their claims are based on a judgment obtained by them against Woodd on April 25, 1940, in the Superior Court of Los Angeles County, California, in cause No. 435718. [Ex. A, R. p. 10.] Said judgment was affirmed by the California Supreme Court on August 3, 1942. (*Douillard v. Woodd*, 20 Cal. 2d 665.)

Insofar as the appellants are concerned, the controversy between them and said creditors, as bearing on some of the controlling issues herein, was determined adversely to said creditors by the State Court in *Douillard v. Smith*, 70 Cal. App. 2d 522.

### III.

#### Nature of Controversy.

The controversy herein between the appellants and the trustee in bankruptcy relates to the Virginia Avenue property and the Glendale property.

#### A.

##### Virginia Avenue Property.

This property was purchased by M. L. Hovey in trust for Fred W. Heath and Daniel A. Knapp at an execution sale on *April 12, 1943*, and it was based on a judgment recovered by them (in the name of Hovey) as plaintiff in the Superior Court of Los Angeles County in action No. 450821 against the bankrupt on July 8, 1941, in the sum of \$4000.00 and costs. The sale not having been redeemed, a Sheriff's deed for said property was given to Hovey in trust for Fred W. Heath and Daniel A. Knapp on *April 18, 1944*. Since that time, Fred W. Heath and Daniel A. Knapp have remained the unconditional owners of said property. (See Sheriff's deed attached to Amended Record.)

#### B.

##### Glendale Property.

The Glendale property was also purchased by Hovey in trust for Heath and Knapp at a Sheriff's sale held *September 8, 1942*, and it was based on the same judgment. Said sale not having been redeemed, a Sheriff's deed to said Glendale property was given to Hovey in trust for Heath and Knapp on *April 18, 1944*. (See Sheriff's deed attached to Amended Record.)



The Glendale property was sold by Heath and Knapp in January, 1946, and the net amount realized thereon was \$2400.00.

In an action filed by Emile A. Douillard, one of the creditors herein, in the Superior Court of Los Angeles County against Heath and Knapp and others, said Heath and Knapp judgment and the sale of the Glendale property thereunder were attacked as fraudulent and void on the same grounds as were asserted by them in this proceeding. (*Douillard v. Smith, et al.*, 70 Cal. App. 2d 522.) The decision was in favor of Heath and Knapp. The court ruled that Heath and Knapp were not guilty of any fraud or conspiracy, and that their aforesaid judgment was valid, that their aforesaid purchase at said Sheriff's sale was valid, and that they had good legal title thereto. [See also Ex. 1, R. pp. 118-123.]

Said suit by Emile A. Douillard was brought in behalf of himself and the other creditors herein, as impliedly found by the Referee [R. p. 59; last four lines of Para. IV.]

Fred W. Heath, who had previously represented Woodd for many years, and who was also her attorney in said litigation, was well familiar with all of the facts surrounding the transaction [R. pp. 311, 319, 320, 411, 434] and he testified thereto at the trial in the *Douillard v. Smith* case. His testimony is recited on page 526 of the court's opinion.

Daniel A. Knapp, on the other hand, was not so familiar with the transaction, as he acted only as associate counsel with Heath in said litigation.

Fred W. Heath died *Sept. 8, 1945*. The instant action against his estate and Daniel A. Knapp was not launched *until December 3, 1946*.

#### IV.

##### **Pleadings Re Heath and Knapp Controversy.**

On *December 31, 1946*, a petition was presented by the trustee to the Referee, in which it was alleged *in general language and upon information and belief* that the Heath estate and Knapp claimed an interest in the Virginia Avenue property, but that their claim was void. Based upon said petition, an order to show cause was issued on December 31, 1946, directing the Heath estate and Knapp and other parties therein named to defend their title to said Virginia Avenue property. The order to show cause was returnable January 20, 1947. [R. pp. 26-28.]

The answer to said petition and order to show cause was filed January 16, 1947. In their said answer, Heath and Knapp alleged, in detail, the source and origin of their titles to the Virginia Avenue and Glendale properties, and made specific reference to their aforesaid judgment against Woodd of July 8, 1941, in action No. 450821, and to the aforesaid Sheriff's sales made pursuant to and under said judgment. [R. p. 29-37.]

#### V.

##### **Referee's Findings.** [R. pp. 57-62.]

The Referee's first impressions (see his Memorandum opinion [R. 38-55]) were that Heath and Knapp's aforesaid judgment against Woodd and the Sheriff's sales thereunder were had under suspicious circumstances. Said impressions were all eliminated in his Findings. Instead, the validity of their said judgment and of the Sheriff's sales based thereon was recognized in said Findings [R. pp. 57-59], and there is no finding, either express or

implied, that said judgment and sales were either fraudulent or invalid. Further, there is an express reference in the Findings to the *Douillard v. Smith* case [see Finding IV, last four lines on p. 59 of the Record], wherein said judgment and the Glendale property sale were upheld.

The basis of the trustee's case against the appellants, according to said Findings, rests solely *on contract*. [See Finding V, R. pp. 59-60.]

The Referee found: (a) that an *agreement* was made by Heath and Knapp to reconvey the Virginia Avenue property to Woodd as, if and when their judgment was paid; (b) that said *agreement* was made "Sometime *after* the Sheriff's sale (April, 1943) and prior to the filing of the voluntary petition herein" (August 29, 1945); (c) that said judgment was thereafter paid pursuant to said *agreement*, (d) that it was paid "before the filing of the voluntary petition," (e) that *under the agreement*, said reconveyance was to be made not "until she (Woodd) should secure her discharge in bankruptcy and the estate should be closed," and (f) that said agreement was secret.

The Referee further found [R. pp. 60-61] that the Virginia Avenue property was reconveyed by Hovey to Wood's nephew on September 11, 1946; that thereupon same was reconveyed by him to Woodd, and that Hovey received therefor \$500.00 "*demand*ed by Hovey for his services rendered as trustee and agent" for Heath and Knapp.

There is no finding that Heath and Knapp had knowledge of said conveyances, or that they had participated



or acquiesced in said transaction, or that they were guilty of fraud in connection therewith.

Nor is there a finding that said secret agreement related *to the Glendale property*; nor is there a finding that there was an agreement that the proceeds received upon the re-sale of the Glendale property should be applied as a payment on the judgment.

And there is no finding that Heath and Knapp were guilty of fraud in connection with the acquisition of either the Glendale property, or of the Virginia Avenue property at the aforesaid Sheriff's sales.

The *conclusion* of fraud is contained only in Finding VI [R. p. 61] *and same is only against Woodd and relates solely* to the Virginia Avenue property. The finding recites *in general language* that *she* (Woodd) was guilty of fraud in that she planned to conceal the Virginia Avenue property from the bankrupt's trustee.

On said *conclusion*, Heath and Knapp were divested of their title to the Virginia Avenue property.

Objections to said findings were filed by Heath and Knapp on the grounds (among others): (a) that the findings were not sustained by the evidence; (b) that the evidence was undisputed that there was no secret agreement; (c) that moreover the judgment was at no time paid; (d) that said findings imputed dishonorable acts to Heath "*now deceased*" and to Knapp "both of whom have been *judicially exonerated*" (*Douillard v. Smith, supra*). Said objections were not passed upon by the Referee.

## VI.

### Order of District Judge.

On review [R. p. 83], the Referee's findings were incorporated in the order of the District Judge by reference, and no other findings were made. The Referee's Memorandum Opinion was not incorporated therein. The Referee's order was affirmed without an opinion on December 1, 1947, and judgment thereon was entered December 2, 1947.

## VII.

### Issues.

In light of said Findings, the issues are but few and simple. They are:

1. Is there any evidence to support the Referee's Finding that the judgment was paid?
2. If the judgment was in fact paid, when was it paid? Was it paid *before* or *after* April 18, 1944, when the Sheriff's deed became absolute and Heath and Knapp became the unconditional owners of the Virginia Avenue property?
3. If the judgment was in fact paid, was it paid *before the filing of the petition in bankruptcy*?
4. If the judgment was in fact paid, is there any evidence in the record to support the Referee's Finding that it was paid *pursuant to an agreement*, secret or otherwise, not to reconvey the property to Woodd "until she should secure her discharge in bankruptcy and the estate should be closed"?

5. If such an agreement was made, was it made *before* or *after* April 18, 1944, when their title to the Virginia Avenue property became absolute?

6. If such an agreement was made *after* April 18, 1944, was the agreement in writing and enforceable under the Statute of Frauds?

7. Was the court warranted, under all of the circumstances in this case, in concluding that the property in question belonged to the bankruptcy estate of Woodd?

These are the only issues which are presented by the Referee's Findings, insofar as Heath and Knapp are concerned.

As the issue bearing on the validity of the Heath and Knapp judgment and of the Sheriff's sales thereunder of either the Virginia Avenue property or of the Glendale property was eliminated by the Referee's Findings, a recital of the facts on this issue would be superfluous and irrelevant.

However, if this court is interested in this issue, may we respectfully suggest to the court to read *the Douillard v. Smith* case in 70 Cal. App. 2d 522, wherein the facts in support of the validity of said judgment and of the Sheriff's sale of the Glendale property are comprehensively stated.

Assuming *arguendo* that the Referee's Findings herein are specific and are in compliance with Rule 52 of the Rules of Civil Procedure, the evidence on the above aforesaid stated relevant key issues clearly establish the following facts, and same are based not on a speculation and conjecture, but on competent and sworn testimony:



A.

The Heath and Knapp Judgment Was Not Paid at Any Time.

The following tabulation of the amounts collected on said judgment is established by the exhibits attached to the corrected Record, namely: Sheriff's Collection Return, dated Sept. 10, 1941; Sheriff's Collection Return, dated April 16, 1943; Return on Execution, dated April 12, 1943; Return on Execution, dated September 8, 1943:

Hovey v. Wood No. 450821 Superior Court.

Judgment \$4000.00

20.25 Cost bill.

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\$4020.25 Entered July 8, 1941.

48.46 Int. at 7% from July 8, 1941 to  
Sept. 10, 1941.

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\$4068.71

430.48 Net amount applied from attachment in Condemnation case *L. A. v. Winter* No. 444092 Superior Ct. on Sept. 10, 1941 after deduction of Sheriff's fees.

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\$3638.23 Amount unsatisfied on Sept. 10, 1941.

253.23 Interest from Sept. 10, 1941, to  
Sept. 8, 1942.

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3891.46

1200.60 Net amount applied from Sheriff's sale of *Glendale property*,  
Sept. 8, 1942.

---

2690.86

111.99 Interest from Sept. 8, 1942 to  
April 12, 1943.

---

2802.85

1746.05 Net amount from Sheriff's sale  
of *Virginia Avenue property*  
April 12, 1943.

---

1056.80

.82 Interest from April 12, 1943 to  
April 16, 1943.

---

1057.62

9.90 Collected as rent from Mrs. G.  
Yarborough and applied on Judg-  
ment April 16, 1943.

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\$1047.72 Balance due.

(It should be noted that said net balance of \$1047.72 on April 16, 1943, as established by the Sheriff's official records, was arrived at *after crediting* the judgment with \$1200.60 (*paid by Heath and Knapp for the Glendale property*) and with the further sum of \$1746.05 (*paid by Heath and Knapp for the Virginia Avenue property.*) Please note further that the aforesaid net balance of \$1047.92 is in substantial accord with Heath's statement in his will of *April 22, 1943*, wherein he estimated that the balance then was *about \$1000.00*. [R. pp. 115-116.]

It is respectfully submitted that the characterization of this will in the Referee's Memorandum Opinion as being "a hidden secret revealed by a dead man's will" [R. p. 39], and the further statement therein [R. p. 54] that this revelation constituted clear evidence of payment of the judgment *before the filing of the bankruptcy petition*,

and that by reason of said payment the Virginia Avenue property became an asset of the bankruptcy estate at the inception of the bankruptcy are clearly erroneous.

Passing for the time being that the Referee's finding [R. p. 60] that the judgment was paid is but a conclusion, and not a specific finding of an ultimate fact, and assuming *arguendo* that the Referee's Memorandum Opinion may be accepted as a substitute in place of his "Findings," it is respectfully submitted that the alleged itemized payments recited in said Memorandum Opinion [R. p. 43] did not and could not be applied as payment on the judgment.

1. *\$500.00 payment to Hovey September 11, 1946.* This was made *after* the bankruptcy (Bankruptcy petition was filed August 29, 1945); it was not paid to Heath and Knapp, and, as hereinafter pointed out, same was received by Hovey without Heath and Knapp's knowledge and consent and in fraud of their rights.

2. *Payment to Knapp of \$1600.00.* This was made in *January of 1946 (after the bankruptcy)*, and it was received on the *re-sale of the Glendale property*, which on this record was Heath's and Knapp's own property. [R. pp. 393, 335, 336.]

3. *Payment to Hovey of \$1200.00.* This was likewise received *after* the bankruptcy, on the re-sale of the *Glendale property*, and as hereinafter pointed out, it was, moreover, wrongfully withheld by Hovey from the Heath estate.

4. *Payments to Hovey from mortgage increase.* This money was used as a cash stay bond on the appeal involving the so-called Yarborough note [R. p. 167-434] in the



case of *Puissegur v. Yarborough* reported in 29 Cal. 2d 409 in which Puissegur (one of the creditors herein) prevailed; that upon the affirmance of said appeal in his favor, the moneys were repaid to Puissegur [R. p. 168] and the only money received by Heath and Knapp in this transaction was \$9.90 which was duly credited on the judgment on April 16, 1943. (See Sheriff's Return on Execution.)

The evidence in the record is undisputed that said balance of \$1047.72 was at no time paid, either *before* or after the bankruptcy.

**B.**

**There Was No Agreement, Secret or Otherwise, to Reconvey the Virginia Avenue Property to Woodd.**

Assuming that the judgment was in fact paid, it was not paid *before* the bankruptcy, and moreover, there was no agreement as found by the Referee.

The only arrangement between Woodd and Heath and Knapp, as established by the record, was that Woodd was to act as caretaker, that she was authorized to collect the rents for Heath and Knapp and in consideration thereof she was to have the use of one flat, rent free.

The only witnesses on this issue were Knapp, in his own behalf (Heath being dead), and Woodd and Hovey, witnesses for the trustee.

*Knapp's testimony* appears on pages 323, 330 and 428 of Record.

“A. She was to collect the rents and as remuneration (90) for collecting the rent she was to receive an apartment.” [R. p. 323.]

“A. I cannot tell you but my understanding from Mrs. Knapp was that she paid out practically every bit of the rent on mortgages and interest.” [R. p. 330.]

“A. No, the only thing, the only conversation relative to that, and I don’t know when it was, was to the effect that the moneys received from the rentals were to be used to pay off an encumbrance and Mrs. Woodd was to have the use of an apartment for the purpose or rather in consideration of collecting the rent and keeping the place up.” [R. p. 428.]

*Woodd’s testimony* (a witness for the trustee):

“Q. Dr. Hovey took the property and kept it?

A. Yes, sir.

Q. You didn’t have any agreement with him to get it back? A. No, sir.

Q. Or collect the rents or anything? A. Yes, I was collecting the rents on Virginia Avenue.

Q. Why? A. Because they allowed me to live there. I had no place to go.” [R. p. 134.]

She further testified that she remitted the rents to Hovey, that Hovey paid the taxes and made the payments on the mortgage, that the arrangement was made after the sale of the Virginia Avenue property [R. pp. 134, 144, 244, 451]; that she had no interest in the property after it was sold by the Sheriff [R. p. 185]; that after the sale she was the “caretaker or agent” [R. pp. 272, 245]; that upon the Sheriff’s sale of the Virginia Avenue property (April 12, 1943) the judgment against her was credited then with \$1775.00 [R. p. 273]; and prior to the sale she was paid her homestead exemptions. [R. pp.

331, 450.] (See also Amended Record, Order of Court and her receipt.)

Being under the impression, however, that Heath's will under date of April 22, 1943 [R. pp. 115-116], was a "hidden secret revealed by a dead man's will" [R. p. 39] (this in face of the fact that it was in full accord with the Sheriff's official record), the Referee thereupon proceeded to interrogate Woodd *as to her interpretation of Heath's will* and along the lines, as indicated by the following colloquy:

"Q. Now, when Mr. Heath wrote his will, the will that they are now probating, apparently in court, it says: 'Mrs. Woodd owed me about \$1000.00 represented in the Hovey versus Woodd judgment.' Now, that was on April 22, 1943; after that date has he received his \$1,000.00? A. No, he has not.

Q. *What did he mean*; what did you owe him on April 22 (247) 1943? A. I don't know, I owed him money long before that; I had divorce cases and things like that and the Douillards gave me so much trouble all through the years." [R. p. 451.]

"Q. Was there an understanding that when, say as of April 22nd, 1943, that is when Mr. Heath made the statement, wrote it out in his own handwriting, was there an understanding that if and when he received for his part of this Hovey judgment another \$1,000.00, that that would satisfy him? A. I don't remember anything like that.

Q. What is now your *explanation* as to his statement of April the 22nd, 1943, that you owed him about \$1,000.00 represented in the Woodd versus Hovey judgment? A. I would not know.

Q. Now, you heard Mr. Knapp state his claim to this property. Do you consider that he has been paid? (248) A. Mr. Knapp has been paid?



Q. Yes. A. *No, I don't feel that he has been paid.*

Q. How much does Mr. Knapp, in your opinion, still have coming? A. I would say more like \$1,000.00 to Mr. Knapp. He fought all through this thing; Mr. Heath was sick a great deal.

Q. In other words, if you owed anything to anyone, you would say \$1,000.00 to Mr. Knapp and not to Mr. Heath? A. Yes, I would say that.” [R. p. 452.]

“Q. But he contends he should have all of it. A. Yes, I know he does.

Q. That is what he contends. (249) A. Yes, I know.

Q. And you dispute that contention, that he should not have anything more than \$1,000.00, is that it? A. Yes, sir.

Q. It was bought by your nephew and he gave it to you after he bought it? A. Yes, sir.

Q. So you can claim it is yours? A. Yes, sir, *and I don't want to let go of it.*” [R. p. 453.]

“Q. By the Referee: Well, now what about this—if you think Mr. Knapp would have another \$1,000.00 coming, then if that is the case there is something that still should be paid to him, even under your theory, or did he get the \$500.00 from Mr. Hovey? A. I don't know that.

Q. How is Mr. Knapp going to get his money if he should have another \$1,000.00, if he has not been paid to that extent, how is he going to get his \$1,000.00? A. I don't know.” [R. p. 455.]

“Q. How is he to be paid? A. Well, I would have to borrow some money somewhere to pay it.” [R. p. 456.]

*Hovey's testimony* (a witness for the trustee):

He testified that the rents were remitted to Mrs. Knapp until Heath's "recent illness," and that thereafter they were remitted to him [R. p. 200]; and that the arrangement was that Woodd was to collect and remit the rents, and that she was to have one flat, rent free [R. p. 201]; *that there was no arrangement to return the property to her* [R. p. 202]; and that Woodd was paid for her homestead exemptions before the sale [R. pp. 207, 209, 210]; and that upon the sale of the property he took over the management. [R. p. 216.] See his further testimony along the same lines on Record pages 150, 375, 376, 377, 512.

He further testified that he was instructed to collect the rents [R. p. 513]; that he paid the taxes [R. p. 512]; that the net monthly rental was \$35.00, and that the monthly payments on the mortgage were in like amounts [R. p. 513], and

“Q. Did you ever have a conversation with Mr. Heath or Mr. Knapp or Mrs. Woodd regarding the keeping of the property out of Mrs. Woodd's name until the litigation was disposed of? (42) A. *No, I never have.*” [R. p. 157.]

C.

**The Referee's Conclusion of Fraud [Finding VI, p. 61] Is  
Confined to Woodd.**

As previously pointed out, the Referee's Finding is that the \$500.00 paid to Hovey because he "*demanded*" it, that same was paid to him in behalf of Woodd "*for his services* rendered as trustee and agent for Fred W. Heath and respondent Daniel A. Knapp,"

*There is no finding that this was done with Heath's and Knapp's knowledge and consent, or that they had acquiesced therein.*

D.

**Facts in Connection With Placing of Title in Woodd After  
Her Discharge.**

The facts hereinafter recited clearly show that Heath and Knapp had no knowledge of this transaction, *and that same was in fraud of their legal rights.*

Knapp's testimony was that it was not until *December, 1946* (at one of the hearings before the Referee) that he had obtained the information that Hovey had previously caused the title to be transferred to Woodd [R. pp. 337, 342, 427, 428] and

"The Witness: *The property was being held for the rental and awaiting a market. It was run-down. the house was in bad shape; the trees were falling around about it and unless someone wanted that property badly we were afraid we could not get what would be desired. Dr. Hovey and I have talked about that situation a number of times. Then came the message day before yesterday that he had sold the property, and if I remember correctly, to Louis*



Douillard, and that Louis Douillard had sold it to Mrs. Woodd.

Yesterday I went out to Mrs. Woodd's to verify (119) that fact and find out how in the world it all came about and I took Dr. Hovey with me there. And I was simply amazed and astounded to find that any such proceeding as that took place; because Dr. Hovey had testified all the way through that he was holding the property for Mr. Knapp and Mr. Heath and had no interest in it whatsoever." [R. p. 345.]

"Q. By the Referee: What explanation did he give you, Mr. Knapp, when you confronted him with the facts? A. Well, he said he thought, as near as I could get it, that he was selling the trustee's interest. He told Mr. Douillard he was unable to attend to the renting and to the property and he thought a younger man should take over his duties; and I asked him how it happened he took \$500, and his only explanation to me was that he needed the money and he said also at that time that his legs and hips were swelling and he was in a terrible condition physically and mentally and wanted to get out of the picture.

Q. At that time was he holding the property for you and Mr. Heath or just for you? A. He was holding the property for me and for the estate of Mr. Heath." [R. p. 346.]

He further testified that Hovey had no interest in the property, but that Hovey told him at one time that Heath was indebted to him for moneys loaned to him in his lifetime [R. p. 322, 415]; that, however, Hovey has retained about \$1200.00 out of the moneys belonging to the Heath estate upon the sale of the Glendale property with-

out filing a claim therefor in the Probate Court [R. pp. 419, 423]; that Hovey refused to pay the money back to the estate because he claimed that Heath had owed him that money. [R. pp. 423, 424.]

Hovey (a witness for the trustee), testified that he had known Heath for many years [R. pp. 196, 198]; that at the time of his death, Heath owed him \$1200.00 and he therefore felt that he was entitled to an equity in the property to that extent [R. pp. 211, 212]; that he considered, however, that this \$1200.00 debt had been repaid when he retained this sum upon the re-sale of the Glendale property, but that Heath owed him other money.

“A. He still owed me *some legal fees* for the frequent trips I have made from my office, like this venture, where I have to be away, and that was to come in as part of the expense account of this suit—the \$1000.00.” [R. p. 214.]

“Q. For those services, then, in connection with this litigation, you were to get \$1200 and the property was then more or less held by you as security for the payment of that? A. That is right.” [R. p. 215.]

Elsewhere, however, he testified, that the \$1200.00 due him from Heath at the time of his death was for a *loan* made to him in connection with the sale of a farm in Nevada. [R. p. 222.]

He admitted that Knapp had no knowledge of their dealings. [R. p. 221.]

He testified:

“Q. You testified the other day you were going to get it out of this property. A. That is right; I want it.” [R. p. 152.]

When asked by the Referee why he had not consulted Knapp before he sold the property to Woodd’s nephew for \$500.00, his testimony was:

“Q. And yet you went out and sold this property without consulting Mr. Knapp? A. Yes, I did.

Q. Why did you? A. I have no idea.

Q. By the Referee: Was it to defraud him out of any money? A. Oh, no.

Q. Did you give him the \$500? A. No, I didn’t.” [R. p. 366.]

“The Referee: It looks as though you got whatever you got your hands on in this deal. Let’s go into this a little further.

Q. By Mr. Bowden: Have you still got the money you received out of the Glendale property? A. No.

Q. What did you do with it? A. I used it in my living and in my business.

Q. How did you regard it or record it on your books of account? A. Why, it is just the amount that was due to me from Mr. Heath.

Q. What was that? A. That was for the sum of money he had owed me for a number of years.

Q. How long? A. I believe he owed me that about 12 years. (146)



Q. By the Referee: That paid your account, did it, and balanced you up with him? A. The 1200 did, yes sir.

Q. By Mr. Bowden: What portion of the money was allowed to the fees or expenses in the suit of Hovey vs. Woodd? A. I don't know. Is that the \$1200, the fee?

Mr. Bowden: I don't know. I am asking you. A. I don't know." [R. p. 367.]

He further testified that he had not advised either the Heath estate, or Knapp about the proposed sale to Woodd's nephew [R. p. 370] *and admitted* that he was later reprimanded by Knapp. [R. p. 371.]

And the reason assigned by Hovey for his actions was that he was in a bad mental and physical condition, and that he thought he was entitled to some money for his services and his mental distress [R. p. 374] and

"I had somewhat had a physical breakdown in August and did a lot of things that was rather astounding to find myself doing mentally, and I was very anxious to get the responsibility of everything off my shoulders that I could, with the sole exception of my own work, which was burdensome enough." [R. p. 381.]

Mrs. Woodd, who was a witness for the trustee, testified that she was told by Knapp at one time that he had the intention of selling the Virginia Avenue property [R. p. 235]; that *she became thereupon frightened and sick*, as she did not know "where I would move to" [R.

p. 236] and that she might be evicted [R. p. 463]; that she told her nephew that Knapp threatened to sell the property [R. p. 247]; that her nephew thereupon went to Hovey (why he didn't go to Knapp, she did not know) [R. p. 247]; that, while, admitting the judgment against her had not been paid as yet, she felt, however, that she was not indebted to Heath because he had owed her some other money in connection with another deal relating to another piece of property [R. p. 459]; that she was advised by counsel that she could buy property or take gifts after she was discharged [R. p. 470]; and, when asked by the Referee why she did not see Knapp about it, her testimony *was that her nephew took it upon himself*. [R. p. 472.]

Woodd's nephew, L. A. Douillard, also a witness for the trustee, testified that he went to see Hovey as he figured that he could get the property, and also that he may have discussed it with Woodd [R. p. 351]; that Hovey did not tell him that it was Heath and Knapp's property [R. p. 352]; that he paid his own money [R. p. 355]; and that he lived with Woodd in the same house [R. p. 355] but that he did not know about her bankruptcy [R. p. 352], and "I figured something happened to me I would like for her to have it" [R. p. 354]; that Woodd did not pay him any money that "I just gave it to her" [R. p. 355]; that he did not know that Heath and Knapp had represented his aunt [R. p. 475], but that Heath's name was mentioned [R. p. 476]; that Woodd did not tell him that the judgment against her has been

paid [R. p. 476], and that he did not have a conversation with his aunt before he went to see Hovey [R. pp. 476, 479]; that he did not know that Knapp had an interest in the property [R. p. 483] *and that the deal was made as soon as Hovey told him that he wanted \$500.00.* [R. p. 484.]

The testimony of these witnesses, we submit, gives the true picture of the transaction in connection with the placing of the title in Woodd's name after her discharge. While the testimony *of the trustee's witnesses* (Woodd, Hovey and Douillard) was not confidence inspiring and "was so inconsistent and contradictory as to cause the Referee to doubt even their simplest declarations" [Referee's Certificate R. pp. 22-23], Knapp's testimony, on the other hand, was straightforward, consistent and realistic, and was not characterized as incredible either in the Referee's Certificate [R. pp. 22-23], or in his Findings. [R. p. 61.]

The fraud conclusion in the Findings [Finding No. VI, R. p. 61] is directed solely against Woodd.

It is crystal clear from the evidence that the placing of the title in Woodd's name after her discharge was engineered by Hovey and Woodd (through the instrumentality of Douillard) for the sole purpose of enabling Hovey to obtain the further sum of \$500 (in addition to the \$1200.00 heretofore misappropriated by him upon the sale of the Glendale property) and also to enable Woodd to have a place to live in, and to prevent her eviction from the Virginia Avenue property after she was told by Knapp that he might sell it in the open market.



### Argument.

We respectfully submit that the Order and Judgment we are appealing from is clearly erroneous, and is not justified on any ground, theory, or hypothesis; that the evidence supports neither the findings of the court, nor the order decreeing the property to be that of the bankruptcy estate of Woodd.

It goes without saying that Mr. Knapp should not have acted as his own trial counsel in the court below. The record fairly shows that he was under a mental strain throughout the numerous hearings before the Referee as he was sincerely convinced that the instant action against him and against his dead associate was but a continuation of the smearing campaign and persecution which first originated in the *Douillard v. Smith* litigation. [See Objections to Findings, R. p. 55 reading]:

“ . . . that said finding is scandalous and imputes dishonorable acts to an honorable member of the State Bar of California now deceased, and to Daniel A. Knapp also such a member, both of whom have been judicially exonerated as to said acts and conduct.”

And also his comment at the conclusion of proofs, reading in part:

“As regards this conspiracy—there is not one iota of conspiracy on the part of Mr. Knapp in connection with it. On the contrary, the entire evidence is contrary to anything of that sort. This thing has been reduced to transcript after transcript and adjudicated on this point, both in the Superior Court and the Appellate Court and finally in the Supreme Court of the State of California; (331) and out of anything that ever happened to any individual, the party who is opposed to him can always bring in the idea of conspiracy or something of that kind, but there is no conspiracy in this case,” [R. pp. 519-520.]

“Possibly this is too much of a personal effort to prove as far as I am concerned *and I hope the Court will excuse me, but I am a lawyer, and, your Honor, it hurts.*” [R. p. 520.] (Emphasis ours.)

It is logical to assume that, being in that condition, Knapp was not and could not be in a state of mind to make an adequate argument in the court below.

But, regardless of the above, all of the evidence shows rather plainly that the property in question belonged to Knapp and Heath pursuant to proper court proceeding, Sheriff's sales and deeds properly executed and recorded.

The fact that Hovey as trustee for Knapp and Heath wrongfully conveyed this property to Douillard for a wholly inadequate consideration without the knowledge or consent of Heath or Knapp does not strengthen the position of the trustee in bankruptcy; nor does the fact that Douillard endeavored to give this property to the bankrupt after her discharge in bankruptcy establish a secret agreement such as mentioned and referred to in the findings or show Knapp and Heath to be a party to such conspiracy—wrongful, fraudulent or otherwise. The trustee's only claim of a conspiracy or secret agreement to withhold this property from the bankrupt estate until after Woodd had been granted a discharge in bankruptcy rests in the suspicion and inference to be drawn from the acts and conduct of Hovey in his wrongful and unauthorized transfer of this property.

If Hovey had stolen personal property belonging to Knapp and Heath and given it to the bankrupt, we do not believe the trustee would have contended that such property was an asset of the bankruptcy estate. What Hovey actually did do with respect to this real property can scarcely be distinguished in principle from a theft or misappropriation.

## Summary of Argument.

### I.

#### Referee's Findings Are Not Specific and Do Not Comply With Rule 52 of the Rules of Civil Procedure.

We shall refrain from citing the numerous decisions in which Rule 52 is construed. We deem it sufficient to cite two of the most recent decisions construing the meaning of this rule.

The recent case of *Cafritz v. Koslow*, 167 F. 2d 749, involved a loan transaction and the defense was that plaintiff's debt was barred by the Statute of Limitations. The findings of the court therein complained of were:

"1. That the indebtedness, recovery of which is sought here, had long been barred by the statute of limitations.

2. That there was no new contract or agreement, supported by consideration, which would revive the old indebtedness and remove the bar of the statute of limitations."

The judgment was reversed with directions to make more explicit findings of fact. The court stated:

"The findings of fact should be made more explicit with regard to the existence of the new oral contract allegedly created, and continuing within the period of limitation prior to the filing of this suit, as well as to the indebtedness which may have been incurred by appellee pursuant to that contract."

In the case of *Smith v. Dental Products Co.*, 168 F. 2d 516, the court, after citing numerous cases, including Supreme Court decisions, says:

"These are \* \* \* mandatory provisions which should be respected; they are not meaningless words';



‘findings of fact on every material issue are a statutory requirement,’ (158 F. 2d 141.) ‘There must be such subsidiary findings of fact as will support the ultimate conclusion reached by the court.’”

We wish to here point out that the Referee’s Findings are not in compliance with the mandatory provisions of this rule in the following respects:

FINDING IV. [R. p. 59.] This finding says in part:

“That thereafter plaintiff in action number 435718 brought an action against respondent M. L. Hovey to set aside said judgment and was unsuccessful in said action.”

This finding is incomplete and does not clearly state the facts in that this action was not only brought against Hovey but was also against appellants here, Knapp and Heath, and it also involved the validity of the sale by the Sheriff of the Glendale property. Such a finding of fact is material to the issues herein as bearing upon appellants’ claim that the Glendale property was their own and they were entitled to the proceeds upon its re-sale. The re-sale price which Knapp and Heath received for this property some considerable time after the Sheriff had deeded the same to them could by no stretch of the imagination be considered as a payment to them upon the judgment. The judgment had previously been credited with the amount bid at the time of the Sheriff’s sale.

That the Referee was laboring under a false impression with respect to this question is plainly seen in his memorandum opinion [R. p. 43] where he considered the amount received by Knapp and Heath upon a re-sale of this property, long after the Sheriff’s sale, as a payment upon the judgment rendered rather than the amount bid at the Sheriff’s sale.

“The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.”

Civ. Code, Sec. 679.

See, also:

*Estate of Pierce*, 28 Cal. App. 2d 8;

*Burris v. Rodriguez*, 22 Cal. App. 645-647.

FINDING V. [R. p. 59.] This finding in part provides:

“That some time after the Sheriff’s sale, and prior to the filing of the voluntary petition herein, a secret agreement was entered into between Fred W. Heath and respondent Daniel A. Knapp and M. L. Hovey on the one side, and the bankrupt on the other, to the effect that the said real property above described purchased at the Sheriff’s sale in the name of respondent M. L. Hovey, was (61) to be held by said M. L. Hovey until attorneys’ fees in an agreed amount was paid by the bankrupt, at which time the said real property above described was to be returned to the bankrupt, and in the meantime said bankrupt was to have the use and control of said property. That the agreed attorneys’ fees were thereafter and before the filing of the voluntary petition herein, paid by the bankrupt and received by said Fred W. Heath and respondent Daniel A. Knapp, through respondent M. L. Hovey as their agent in said action number 450821 above described.

That at the time of the filing of the bankruptcy proceedings herein, all of said agreed attorneys’ fees had been paid. That it was further agreed between the said respondents herein and the bankrupt that

the real property should not be reconveyed to the bankrupt until she should secure her discharge in bankruptcy and this estate should be closed.”

This finding not only violates Rule 52 hereinabove referred to but it is in defiance of the Statute of Frauds, Section 1624 of the Civil Code, subdivisions 1 and 4. We wish to emphasize the fact that the effect of this finding is, that upon some day over a period of approximately two and one-half years, this “secret agreement” was entered into and according to the latter portion of said above quoted finding, the agreement was not to be fully complied with until after the bankrupt had been given her discharge in bankruptcy which, according to this finding, was on or about the 10th day of September, 1946.

It is likewise important that we keep in mind the fact that the sheriff’s deed to this property was given to M. L. Hovey as trustee for Knapp and Heath more than one year before said bankruptcy proceeding was ever filed. Then, how could this have been “an agreement that by its terms is not to be performed within a year from the making thereof” as provided in subdivision 1, Section 1624, Civil Code, and this finding does not state that such an agreement was in writing. Had it been in writing, it would not have been so difficult to have pointed to the exact date.

According to this finding, this agreement could well have been entered into, if in fact such an agreement exists, after the sheriff had deeded the property as above



referred to, and if an oral agreement was entered into after the sheriff's deed, then subdivision 4, Section 1624, Civil Code would apply and such an agreement would be invalid under the Statute of Frauds.

We respectfully urge that if a court can properly make a finding such as here complained of and find that a "secret agreement" was entered into sometime within approximately two and one-half years, the court could just as easily extend the time to five or ten years. We further urge that the very fact that the court was unable to fix the exact time or the approximate exact time that this "secret agreement" was entered into is tantamount to an admission that this finding is based solely upon suspicion, and the fact that it was based upon suspicion, and suspicion alone, is clearly shown from the evidence herein referred to. Both the quoted and unquoted portions of this finding are not only unsupported by the evidence, but have other glaring defects which we do not deem necessary at this time to comment upon. The defects therein will be quite obvious to the court upon a reading of said finding.

The finding in many respects is nothing more or less than a conclusion and is not a finding of ultimate fact. This finding further states:

"That the agreed attorneys' fees were thereafter and before the filing of the voluntary petition herein, paid by the bankrupt and received by said Fred W. Heath and respondent Daniel A. Knapp through M. L. Hovey . . ." [R. p. 60.]

This finding is in direct conflict with the evidence and is in direct conflict with the reasoning of the Referee in his memorandum opinion. [R. p. 43.] The Referee there figured the \$500.00 paid to Hovey on September 11, 1946, as part of the money which covers the payment of the judgment and this \$500.00 was not paid until long after the filing of the bankruptcy proceeding herein. The other evidence which we have cited in this brief also discloses that the full judgment was never satisfied but there is a balance still owing thereon slightly in excess of \$1,000.00 and there is not a word of evidence showing that M. L. Hovey ever paid this \$500.00 above mentioned to Heath or Knapp.

This finding further fails to state how and when this judgment was paid to Heath and Knapp.

FINDING VI. [R. p. 61.]

A reading of this finding will disclose that it is neither in compliance with Rule 52 nor supported by the evidence. The statement in the finding that "the said real property was at the date of the bankruptcy proceedings an asset of the bankrupt estate . . ." is nothing more than a conclusion of law without any support of facts.

For the reasons heretofore given in this brief, conceding without admitting that the secret agreement set forth in Finding V actually existed, the record is plain that this property was deeded to Hovey as trustee for Knapp and Heath more than one year prior to the filing of the

bankruptcy proceeding and as we have heretofore pointed out, such an agreement would have been invalid under the Statute of frauds unless it was in writing.

Finding VI [R. p. 61] further states:

“That during the prior administration of the said bankrupt estate, the said facts hereinabove referred to with respect to the plan to conceal the said real property from the bankrupt’s Trustee, were not discovered and that the concealment having been discovered after the discharge was granted, the creditors caused the estate to be reopened . . . .”

This finding speaks of a “plan to conceal said property” . . . . “herein above referred to . . . .” Just what plan to conceal the property hereinabove referred to the finding has reference to, we do not know because there is no plan to conceal above referred to in the findings and there is no finding which states directly or indirectly that the appellants herein were involved in any plan to conceal said real property from the bankruptcy estate, nor is there any evidence in the record to justify a finding that Knapp and Heath were involved “in a plan to conceal said property from the trustee . . . .”



II.

There Is No Evidence to Support the Referee's Finding That Heath's and Knapp's Judgment Was Paid Before Bankruptcy. On the Other Hand, the Record Shows That This Was Not Paid at Any Time.

What has heretofore been said with respect to the payment of this judgment fully covers this point without the necessity of further comment.

III.

There Is No Evidence to Support the Referee's Finding That There Was a Secret Agreement to Re-convey the Property to Woodd After Her Discharge. On the Other Hand the Record Shows Clearly the Absence of Any Agreement, Secret or Otherwise, Valid Under the Statute of Frauds or Otherwise.

Likewise, what we have heretofore said upon this question in commenting upon this finding fully covers this point.

IV.

If the Language Referring to "Secret Agreement" in Finding V [R. pp. 59-60] Implies Fraud, There Is No Evidence in the Record to Support Said Finding. On the Other Hand, the Evidence Negatives Any Evidence of Fraud Upon Behalf of Knapp and Heath.

Fraud cannot be supported by mere suspicion or suspicious circumstances.

"Whether a particular inference can be drawn from certain evidence is a question of law."

*Blank v. Coffin*, 20 Cal. 2d 457;

*Kosloskye v. Cis*, 70 Cal. App. 2d 174.

In 10 Cal. Jur., page 740, paragraph 61, the law on inferences is summarized as follows:

“Inferences, however, are not of sufficient force to raise a conflict. They may be defeated by proper evidence, *and clearly cannot prevail against a proved fact to the contrary.*” (Emphasis ours.)

This text was approved of in *Blank v. Coffin*, 20 Cal. 2d 457.

In *Giannini v. Southern Pac. Co.*, 98 Cal. App. 126, the Court said at page 136:

“While all reasonable inferences are to be drawn from the evidence in favor of the conclusion of the jury and conflicts are to be resolved in favor of respondents, *inferences cannot be drawn contrary to uncontradicted testimony and based upon imagination, speculation or supposition.* The jury cannot shut its ears to the only testimony on the question and set up a standard of its own.” (Emphasis ours.)

In the leading cause of *Maupin v. Solomon*, 41 Cal. App. 323 (approved by the Supreme Court), the second syllabus reads:

“Such inferences are allowed to stand not against the facts they represent, but only in lieu of proof of such facts, *and where the facts are proven to be contrary thereto*, no conflict arises and a finding of the jury in accordance with such inference cannot be supported thereby.” (Emphasis ours.)

In *Dull v. Atchison, T. & S. F. Ry. Co.*, 27 Cal. App. 2d 473, the Court said that inferences cannot be based upon imagination, speculation or supposition.

In *Lyders v. Wilsey*, 94 Cal. App. 493, the Court said on page 496:

*“The first ground is that the two respondents conspired to defraud him out of his right to purchase the land and that we should find this to be true by disregarding all the sworn testimony upon which the trial court found the facts and by taking in lieu of that evidence the suspicions which the appellant entertains regarding the conduct of the respondents. Though it should be sufficient to say that this court will not set its judgment above that of the trial court upon the simple question of the facts in issue where the finding of fact depends upon the truth of the testimony of the witnesses appearing before the trial court, there is another answer to the argument of appellant and it is this: his only claim of a conspiracy rests in the suspicions and in the inferences which he insists must be drawn adverse to the positive evidence in the record. But an inference is a deduction to be drawn from the facts proved and not a conclusion based upon suspicion alone.”* (Emphasis ours.)

The claimed inference of fraud is answered by the Court in the case of *Podlasky v. Price*, 87 A. C. A. 174, where the Court pointed out that a finding of fraud is too serious a charge to be left to conjecture or surmise; that the presumption is against fraud and is not overcome by shadowy evidence and must be clearly made out.

See also the case of *Douillard v. Smith*, 70 Cal. App. 2d 522, upon this question in which case both Knapp and Heath were defendants, wherein it is said at page 526:

“In *Estate of Ross*, 199 Cal. 641, 651 (250 P. 676), the court said: ‘It is true that the trial court is the exclusive judge of the weight to be given to



the evidence, but it is also true that the presumption is in favor of honesty and fair dealing (see *Estate of Sweetman, supra*, at p. 28 (185 Cal. 27 (195 P. 918))), and the burden is upon the party asserting the fraud to prove it by some substantial evidence (12 Cal. Jur. 817). The facts and circumstances shown in evidence must have given rise at least to a reasonable inference of fraud and not a mere suspicion thereof. (*Roberts v. Burr*, 135 Cal. 156 (67 P. 46).) Indeed it has been held that "if there be two inferences equally reasonable and equally susceptible of being drawn from the proved facts, the one favoring fair dealing and the other favoring corrupt practice, it is the express duty of the court or jury to draw the inference favorable to fair dealing." " "

### Conclusion.

In conclusion, we submit that the findings and order of the Referee herein are wholly unsupported by the evidence and the order depriving these appellants of their property cannot be supported either upon the facts or upon the law of the case and that the order and judgment herein appealed from should be reversed.

Respectfully submitted,

ERNEST R. UTLEY and  
J. GEO. OHANNESON,

By ERNEST R. UTLEY,

*Attorneys for Appellants.*



No. 11904.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

---

EDNA D. HEATH, Executrix of the Last Will of FRED W.  
HEATH, Deceased, and MYRA C. KNAPP, Executrix of  
the Last Will of DANIEL A. KNAPP, Deceased,  
*Appellants,*

*vs.*

JOHN N. HELMICK, Trustee of the Estate of MELANIE  
DOUILLARD WOODD, Bankrupt,  
*Appellee.*

---

## APPELLEE'S BRIEF.

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No. 11904.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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EDNA D. HEATH, Executrix of the Last Will of FRED W.  
HEATH, Deceased, and MYRA C. KNAPP, Executrix of  
the Last Will of DANIEL A. KNAPP, Deceased,  
*Appellants,*

*vs.*

JOHN N. HELMICK, Trustee of the Estate of MELANIE  
DOUILLARD WOODD, Bankrupt,  
*Appellee.*

---

## APPELLEE'S BRIEF.

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### I.

#### Real Parties in Interest.

It is true that the bankrupt is not a party to this appeal, but the Record will show that she considered herself a party in interest all through the proceeding and on the review of the Referee's order and the District Judge affirmed the Referee's orders against her [R. p. 83].

### II.

#### Referee's Findings [R. pp. 57-62].

We respectfully contend that the Referee's findings fully comply with Rule 52. The only real issue presented to the Referee under the Order to Show Cause issued upon the petition of the Trustee [R. pp. 26-28] was the title of the Trustee and interest, if any, of the respond-

ents, and we fail to understand why it should be necessary to make a finding as to fraud.

The Referee found in Finding V [R. pp. 59-60] that some time after the sheriff's sale, and prior to the filing of the voluntary petition, a secret agreement was entered into between Fred W. Heath, Daniel A. Knapp, M. L. Hovey, and the bankrupt to reconvey the Virginia Avenue property to the bankrupt. It is elementary that when parties enter into secret agreements it is almost impossible to determine the exact time or the place of the making of the secret agreement, and all specific facts surrounding the making of the secret agreement that could ordinarily be ascertained are contained in the Referee's findings.

### III.

#### Argument.

The evidence fully supports the findings of the Court, and the order made therein, and from a reading of the entire evidence there is ample testimony to support the conclusion that the secret agreement was entered into.

Now let us consider the facts leading up to the execution sale involving the Virginia Avenue property. Mr. Knapp himself testified to most of them.

When asked about the judgment rendered in the case of *Hovey v. Woodd*, he stated:

"That action stemmed in a conversation in the office of Mr. Heath a day or so after a judgment was ordered in the case of *Douillard v. Woodd*, and in that conversation Mrs. Woodd was present, Mr. Heath, and myself; and at that time her attention was called to the fact that the probabilities were that the order of the court would mature in a judgment against her for \$7,500 with costs, and either Mr.

Heath or I asked her what she wanted to do under that situation. She said that she wanted appeal, that she thought the judgment was an absolutely unjust judgment; she wished to appeal. We told her that it would require a great deal of extra work, that there had been a large amount of testimony and the transcript would be large, but we would have to examine it minutely, and whether the appeal was made upon a bill of exceptions or a transcript there would be a motion for a new trial and other motions (77) and a brief, until it reach possibly the Supreme Court; somewhere in that time Mr. Heath made the statement, 'You have paid nothing on this, Mrs. Woodd, so far in the way of fees, either to Mr. Knapp or myself, and there will be a great deal more of fees that will accumulate in this case; you also owe me for a large amount of work that I did prior to the time the Douillard case came up.' Mrs. Woodd asked about how much and he said, 'Actually I think about \$2,000, and I think that the amount that would be due on this Douillard case, including the appeal and all, would be \$5,000, that is rough, that is \$7,000.00.' And Mrs. Woodd said she thought that was too much but she would be willing to give her Glendale property, but I told her at that time that I didn't think it wise or advisable to settle with her attorneys in that way, that I thought the best plan of getting at this and so there would be some feeling of contentment on her part, would be to take this before a court in a friendly suit and let the court decide on the amount that was due, and in the meantime we would try to attach anything we could find that she possessed, but it would be in pursuance of our action and in no other way, and we asked her what was her reaction on that and she could find no objection to it and said she



was willing to pay whatever the court might determine. The next day or so after that we brought an action for \$7,000 and we also attached at that time the Glendale property, the Virginia Avenue property and all amounts (78) due and owing to Mrs. Woodd in the matter of Los Angeles v. Winter, 444,092, in the Superior Court; and also the Yarborough note; the amount due and owing at that time being \$689.49. The amount due and owing under the Winter case being \$436.50.

In pursuance of those matters a judgment was issued on July 8, 1941, and in the matter of Hovey v. Woodd for \$4,000 and \$20.25 costs. I was not present at that time except just as the case was closing and know nothing about how much evidence was introduced or anything else, except that there was a stipulation presented to me to sign, in which it was agreed that the amount of the judgment should be \$4,000 as between Mrs. Woodd, Mr. Heath, and myself. . . ." [R. pp. 312-313.]

Mrs. Woodd was not represented by Mr. Heath and Mr. Knapp in the action referred to in his testimony [R. p. 405], but they continued to represent her on the appeal of the State Court judgment [R. p. 436], and all during this time Mrs. Woodd, and up to the date of the reopening of the bankruptcy proceeding, was in possession of the Virginia Avenue property [R. pp. 226-227].

These facts alone are very significant when taken into account the facts occurring after the filing of the petition in bankruptcy, to wit, on September 10, 1946, the proceedings were closed at which time the title to the Virginia Avenue property stood in the name of M. L. Hovey.

When the proceedings were reopened for further administration on December 4, 1946, the title to said property had been transferred to the bankrupt [R. pp. 38-42].

When the petition in bankruptcy was filed Mr. Heath was deceased. Mr. Knapp did not represent the bankrupt but testified on her behalf during the administration [R. p. 311], and when asked about his interest in the Virginia Avenue property, he stated two-fifths was his and three-fifths Mr. Heath's [R. p. 322].

However, when Mr. Heath's will was discovered for the first time and introduced into evidence it stated that Mrs. Woodd owed him \$1,000.00 represented in the *Hovey v. Woodd* judgment [R. p. 412].

We respectfully contend that the findings disclose that all issues were disposed of in clear and concise language.

Appellants devote a great deal of argument to the language of Finding V in not specifying the date the "secret agreement" was entered into.

We submit that from a review of all of the evidence, such a finding as appellants suggest would be impossible and could only be drawn as an inference from the entire evidence.

We believe the chain of events occurring in this case amply support Finding V, to wit, the acquisition of the property by execution sale on behalf of Mr. Knapp and Mr. Heath, keeping the title to said property in Mr. Hovey's name up to the time of the filing of the petition in bankruptcy herein. The almost immediate transfer of

the title to the bankrupt after the case was closed. The bankrupt remaining in possession of the property at all times. The fact that Mr. Heath and Mr. Knapp sued the bankrupt through their assignee for attorneys' fees of \$7,000.00, which apparently were for services rendered, if not entirely, at least in a large part, in defending the action brought against her for \$7,500.00, and the act of continuing to represent the bankrupt on the appeal in said action, subsequent to the time they had sued her.

These are not normal nor usual actions in the ordinary practice of law.

In making his decision, no doubt the Referee and the District Court took into account the fact that Mr. Hovey was acting in a trust capacity, and the relationship of attorneys and client existed between Mr. Heath and Mr. Knapp and their client, the bankrupt herein, throughout all of the transactions and up to the filing of the petition in bankruptcy.

Their relations were of a confidential nature in all transactions.

From uncontradicted facts of this case standing alone, a strong inference of conspiracy can be drawn.

In the case of *Radin v. United States of America*, 189 Fed. 568, cert. den. 220 U. S. 623, the Court stated:

"Conspirators do not go out on the public highways and proclaim their intention. They accomplish their purposes by dark and sinister methods and must be judged by their actions."



In the case of *Johnstone v. Morris*, 210 Cal. 580, the Court stated at page 590:

“The jury may infer the conspiracy from all circumstances, and if the inference is a reasonable one it will not be disturbed on appeal.”

In the case of *Revert v. Hesse*, 184 Cal. 295, p. 301, the Court stated:

“The law recognizes the intrinsic difficulty of proving a conspiracy. The allegations with reference to conspiracy are treated as matters of inducement leading up to a more particular description of the action from which conspiracy may be inferred. . . . The conspiracy may some times be inferred from the nature of the acts done, the relation of the parties, the interest of the alleged conspirators and other circumstances . . .

In the present action, while plaintiff was unable to prove any formal agreement between defendants . . . nevertheless, there was before the court the entire transaction resulting in the consummation of a flagrant fraud upon the plaintiff, in which transaction Sidney Beach participated as an intermediary. . . . These circumstances coupled with the further fact that the defendants . . . were not strangers, but were more or less occupying the same offices, were sufficient to warrant the inference drawn by the trial court that defendant Sidney Beach was a party to the conspiracy which had for its object the fraudulent conversion complained of by plaintiff.”

*Beeman v. Richardson*, 185 Cal. 280.

We believe that Rule 52 has been amply complied with. Rule 52 in part provides as follows:

“Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.”

In the case of *United States v. Aluminum Co. of America*, 148 F. 2d 416, the Court stated:

“It is idle to try to define the meaning of the phrase ‘clearly erroneous’; all that can be profitably said is that an appellate court, though it will hesitate less to reverse the finding of a judge than that of an administrative tribunal or of a jury, will nevertheless reverse it most reluctantly and only when well persuaded. This is true to a considerable degree even when the judge has not seen the witnesses. His duty is to sift the evidence, to put it into logical sequence and to make the proper inferences from it;”.

*Killoren v. First National Bank in St. Louis*, 127 F. 2d 537;

*Kim v. Cox*, 130 F. 2d 721;

*Golstein v. Polakof*, 135 F. 2d 45.

IV.

Conclusion.

We respectfully submit that there is nothing in the record to demonstrate that the Findings of Fact are clearly erroneous, and therefore the judgment should be affirmed.

Respectfully submitted,

LESLIE S. BOWDEN and

J. M. CLEMENTS,

By LESLIE S. BOWDEN,

*Attorneys for Appellee.*





No. 11904.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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EDNA D. HEATH, Executrix of the Last Will of FRED W.  
HEATH, Deceased, and MYRA C. KNAPP, Executrix of  
the Last Will of DANIEL A. KNAPP, Deceased,

*Appellants,*

*vs.*

JOHN N. HELMICK, Trustee of the Estate of MELANIE  
DOUILLARD WOODD, Bankrupt,

*Appellee.*

---

## APPELLANTS' REPLY BRIEF.

---

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No. 11904.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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---

## APPELLANTS' REPLY BRIEF.

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The facts presented in our opening brief were not controverted in appellee's brief. (Court Rule 20.)

Therefore, it is undisputed:

(a) That the Heath and Knapp judgment against Woodd was a valid judgment.

(b) That the execution sale of the Virginia Avenue property made in April, 1943, and the sheriff's deed of April 18, 1944, were legal and valid.

(c) That the two subsequent conveyances in September of 1946, the one from Hovey to Douillard and the other from Douillard to Woodd, were both made without Heath's and Knapp's knowledge and consent.

(d) That the property was at no time an asset of the bankruptcy estate.



As pointed out in our opening brief, the trustee's case, according to the Referee's findings, rests solely on the contract which the trustee claims was made sometime between April, 1943, and August, 1945, under which Heath and Knapp agreed to sell the Virginia Avenue property to Woodd after her discharge as, if and when their judgment against her has been paid in full.

It is, therefore, clear that the trustee's case is one for specific performance of this contract, and the basic and only issue is whether the claimed contract was ever made; and, secondly, whether the judgment was paid in full before bankruptcy in order to entitle Woodd to the equitable remedy of specific performance of said contract.

This, we submit, is the bedrock of the trustee's case, and the insinuations of fraud and conspiracy against Heath and Knapp, as suggested in the trustee's brief, are all irrelevant to this basic issue, and said charge of fraud and conspiracy is a false issue.

In view of the trustee's injection of this false issue, we are impelled to repeat ourselves by presenting the following brief summary of the salient facts.

## I.

### **The Claimed Contract Never Existed.**

That the claimed contract, as asserted by the trustee and as found by the Referee, was never made, is established by the sworn testimony of all of the witnesses. There is not a word in the record to suggest or imply that such contract was ever made. We submit that the trustee's inference to the contrary is but an unfounded suspicion.

It is singular that *no facts* are recited in the trustee's answering brief to support his said suspicion.

II.

**The Judgment Was Not Paid in Full at Any Time.**

This subject is fully discussed in our opening brief on pages 10 to 13 inclusive.

As pointed out in our opening brief, the only cash received by Heath and Knapp on said judgment was the sum of \$430.48 and \$9.90. The tabulation of the amounts collected on said judgment appears on pages 10 and 11 of appellees' opening brief, and said tabulation is supported by the official records of the sheriff of Los Angeles County. The correctness of this tabulation is rather *supported* (and not contradicted) by Mr. Heath's will of April 22, 1943, in which it was stated that the balance due on the judgment on that date was about \$1000.00.

It further appears from said tabulation and from the undisputed evidence in this case that said \$1000.00 was arrived at after having *credited* said judgment with the sum of \$1746.05 (which was paid by Heath and Knapp for the Virginia Avenue property) and with the further sum of \$1260.00 (which was paid by Heath and Knapp for the Glendale property).

There is not a word in the record to show any payment on said judgment after April 22, 1943 (date of the will).

It is incomprehensible why the trustee should harp on said will as being a valuable bit of evidence in his favor.

It is an undisputed fact, therefore, that the judgment was at no time paid, and that Woodd was not entitled to specific performance of the claimed executory contract.

The fact that title to the Virginia Avenue property was placed in Woodd after her discharge through the machinations of Hovey, Douillard and Woodd has no bearing either upon the existence of the claimed contract or upon

the issue of payment of the judgment, as it is undisputed that said conveyances were made without Heath's and Knapp's knowledge and consent.

This subject is discussed fully on pages 18 to 24 inclusive, in our opening brief.

### III.

#### **The Claimed Inferences of Fraud and Conspiracy Against Heath and Knapp Are Based Upon Suspicion and Not on Legal Proof.**

As pointed out in our opening brief, the Referee's finding of fraud was directed solely against Woodd and not against Heath and Knapp. Moreover, there is not a line, word or sentence anywhere in the record to justify the trustee in branding Heath and Knapp (both of whom are dead) as frauds or conspirators.

Moreover, the issue of the suspected fraud and conspiracy is foreign to the issue of specific performance of the claimed executory contract.

### IV.

#### **The Findings of the Referee Are Not in Compliance With Rule 52, Federal Rules of Civil Procedure.**

To amplify what we have stated in our opening brief, we respectfully submit that Rule 52 was not complied with in the following additional respects:

1. The characterization of the executory agreement on the part of Heath and Knapp to sell the Virginia Avenue property to Woodd as being a "secret agreement" [Finding V, Rec. p. 59] is ambiguous and imprecise to constitute a finding of an ultimate fact as required by Rule 52.

2. The language in the same finding on page 60 of the Record to the effect "that the said real property above de-



scribed purchased at the Sheriff's sale in the name of respondent M. L. Hovey, was [p. 61] to be held by said M. L. Hovey until attorneys' fees *in an agreed amount* was paid by the bankrupt . . . That the *agreed* attorneys' fees were thereafter and before the filing of the voluntary petition herein, paid by the bankrupt . . .” in no way complies with Rule 52.

If the Referee knew the amount which was agreed upon to be paid, then said amount should have been stated in the finding; and if he did not know the amount which was agreed upon to be paid, then how can the Referee find as a fact that *this unknown amount* has been paid?

We respectfully submit that the order and judgment appealed from are erroneous, and same should be reversed with costs.

Respectfully submitted,

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